(1)

051173 JAN 9 2006

OFFICE OF THE CLERK

No. 06-

IN THE

Supreme Court of the United States

S. EMANUEL LIN, d/b/a
APTUS COMPANY

Petitioner,

v.

THE UNITED STATES

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CORRECTED
PETITION FOR WRIT OF CERTIORARI

S. EMANUEL LIN, *Pro Se*
3527 Woodvalley Drive
Houston, Texas 77025-4232
(713) 666-3816

QUESTIONS PRESENTED

Our Government failed to furnish approximately $1.42 million worth of equipment for solo Petitioner Mr. Lin to install on the date it default-terminated his entire $1,225,110.00 contract. For his 565 days of performance, almost 24/7 at job site, Mr. Lin was paid a total of $56,497. For those undelivered GFE, Mr. Lin paid $175,000 back to Government for its increased installation cost by a 246-employee completion contractor tendered by a de-listed surety. The said contractor installed no equipment of any kind for the first 571 days of its contract while its contract price rose from original $1,350,000 for a 13 months completion to $2,172,081.65 on the 40th month and continuing. The Questions presented are:

Whether the denial of Mr. Lin's claim for monetary compensation under Contract Disputes Act of 1978, 41 U. S. C. §§ 601~613, was so cruel, unequal and detached in law and the principles of engineering and contracting to contravene the Due Process Clause of the Fifth Amendment?

Whether those portions of contract for which GFE was not delivered at all as of the date of termination or otherwise had been prevented from proceeding to its completion per requirement of the contract can be terminated under FAR 52.249-10 *Default*?

How do we measure progress or recognize a delay in a non-brick-and-mortar contract and what is the extent of a firm-fixed-price contractor's obligation to making what kind of progress while both parties are waiting for a new contract completion date to be re-established?

Whether Government had carried its burden of proof in an un-cited 25-minute solo direct testimony by a non-Contracting Officer who did not know a 120VAC electric circuit at the power plant?

Whether the court, sitting without jury, technical know-how or involvement in the 565-day contract, can decline to "litigate" Petitioner's claims while writing what Government did not or could not testify as truth for cross examination in its 25-minute of case in chief into an opinion with strong negative inference on Mr. Lin that even the favored completion contractor did not perform better?

Whether Government can "assign and transfer" to a delisted surety Mr. Lin's contract equity under an invalidated performance bond?

Whether Government can try a non-Contracting Officer's claims of incompetent jurisdiction to prejudice Petitioner's cause of action?

Whether default termination can stand on "a lone surviving reason among the initial 100" while the same multi-vendor contract survived on Petitioner's performance?

LIST OF PARTIES

Pursuant to Rule 14.1, the following list identifies all of the parties appearing here and in the court below.

The Petitioner herein and Plaintiff-Appellant in the United States Court of Appeals for the Federal Circuit below is Mr. S. EMANUEL LIN, doing business as APTUS COMPANY.

The Respondent here and Defendant-Appellee in the court below is the United States.

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
CONTENTS	iii
TABLE OF AUTHORITIES	iv
TABLE OF APPENDIX	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL & STATUTORY PROVISIONS	1
STATEMENT	2
REASONS FOR GRANTING THE PETITION	13
CONCLUSION	17

TABLE OF AUTHORITIES

Cases

Page	
14	*Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950)
14	*Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)
14	*Murray's Lessee v. Hoboken Land and Improvement Co.* 59 U.S. (18 How.) 272, 276 (1856).
15	*Hurtado v. California*, 110 U.S. 516, 528–29 (1884)
15	*Rowan v. The State*, 30 Wis. 129
17	*Joint Anti–Fascist Refugee Comm. v. McGrath* 341 U.S. 123, 162~163 (1951).
17	*Chicago, M. & St. P. R. Co. v. Polt*, 232 U.S. 165, 168

Statutes and Regulations

Page		
1	41 U. S. C. §§ 601~613	*Contract Disputes Act of 1978*
3	FAR 52.211-10	*Commencement, Prosecution and Completion of Work*
5	FAR 52.243-4	*Changes*
	FAR 52.245-2	*Government Property*
	FAR 52.245-4	*Government-Furnished Property*
14	FAR 52.249-10	*Default*

TABLE OF APPENDIX

Page *Description*

Opinions Below

018 2005-08-04 Federal Circuit opinion
022 2005-10-11 Petition for rehearing denied
023 2004-08-30 Court of Federal Claims Opinion

Statutory Provisions

079 FAR 52.211-10 *Commencement, Prosecution, Completion*
079 FAR 52.243-4 *Changes*
081 FAR 52.245-2 *Government Property*
082 FAR 52.245-4 *Government-Furnished Property*
082 FAR 52.249-10 *Default (Fixed-Price Construction)*

Contract Specification

084 01025 Measurement and Payment
085 01100-11 1.22.2 Liquidated damage for 21 generator out-of-service days
086 15050-2 Construction plan and schedule due in 30 & 90 days
087 15050-6 3.1.1 Approve mfg detailed assembly drawing
088 16050-6 1.3.1 Shop dwgs, removal plan & procedure
179 01100-3 1.5 Gov't furnished property, delivery schedule
185 16050-46 3.9.2(f) Roller-type pipe cutter prohibited
232 16050-50 3.14 Concrete removal, core drilling

APTUS Installation Contract

092 1998-11-05 APTUS installation contract $1,265,110
095 1999-11-24 APTUS contract mod for 150-day extension
097 1998-09-19 Government's estimate on installation contract
099 1999-02-01 APTUS Invoice #1, approved $19,997.00
100 1999-09-30 APTUS Invoice #2, approved $36,500.00
101 2002-11-14 APTUS' checks to Chatham, $175,000.00
103 1998-11-xx Contracting Officer: APTUS never defaulted

Page		*Description*
104	1999-01-04	APTUS' 1st construction schedule & install plan
105	1999-03-17	Lin improved speed sensor bracket installation
107	1999-03-21	Lin identified speed disc mfg deficiency
108	1999-03-24	2nd measurement for speed sensor mount
112	1999-03-24	With these inputs, Voith revised its design
113	1999-10-05	Lin's construction schedule approved 12/2
114	1999-12-10	Rod Shank: APTUS' credible & novel design
115	2000-01-06	APTUS' first day of construction
116	2000-01-15	Best to remove SCADA to make 31JUL00 final
117	2000-01-17	Gary Horner's pay day after absence
118	2000-02-21	PX269 Don Erfourth's 13-page submittal notes
131	2000-02-23	Peach's memo for a meeting with Lin
133	2000-02-24	APTUS CQC report on defective Voith parts
134	2000-02-25	Erfourth's milestones not insertable in a mod
135	2000-03-07	Confirm defective & missing fittings
136	2000-03-14	Voith found no deficiency in Lin's work
137	2000-03-22	Voith to provide missing parts, correct errors
138	2000-03-31	Chatham de-listing notice in Federal Registry
139	2000-04-19	Lin explains kinematics problem per request
142	2000-06-14	Voith parts are at Bunker for modification
145	2000-06-21	Aptus requests delivery of all Voith parts
146	2000-06-26	Govn't did not know whether parts were fixed
147	2003-09-15	Modifications made for Voith's parts in errors

L&S Completion Contract

151	1998-12-04	Chatham's performance bond H000530
153	2000-09-08	COE and Chatham's tender agreement
157	2000-09-08	Completing contract at $1.35 million
160	2000-08-24	L&S Construction Contractor Experience
161	2000-11-07	L&S' Drawing As-Builts Out-dated Notice
162	2001-03-16	L&S T19.0 U10 instrument xfrmer cabinet
163	2001-03-21	Design & COE drawings contain errors
164	2001-04-26	L&S T20.0 U10 switchboard design

Page *Description*

165 2001-05-03 Need HDC support in system integration
167 2001-06-19 L&S P012 for site investigation dwg $45k
171 2001-09-18 L&S P016 to upgrade 12 drawings, $25k
173 2002-03-08 L&S T19.1 U10 instrument xfrmer cabinet
174 2002-03-22 L&S T20.1 U10 switchboard design variance
176 2002-04-08 L&S' 1st day at job site for construction
177 2002-05-02 $224,903.25 to expedite completion by 30SEP
179 01100-3 1.5 Gov't furnished property, delivery schedule
180 2002-05-07 SCADA equipment received today
182 2002-06-06 L&S P023 to use roller-type pipe cutter
185 16050-46 3.9.2(f) Roller-type pipe cutter prohibited
186 2002-06-10 Unit 1 out of service, monthly power product
194 2002-12-18 Voith P003 to replace gate position transducer
196 2004-01-07 L&S P0040, contract price to $2,172,081.65

Supply Contracts

198 1998-03-02 Governor contract $517,180.00
199 1998-05-29 Excitor contract $623,049.00
200 1998-07-10 SCADA contract $902,930.00

Trial Proceeding

201 2003-10-26 Lin invoked DOL to review labor issue
202 2003-10-27 Lin's 2nd motion to exclude trial of labor issue
203 2004-07-28 Order for D's 1st amended brief by Aug 6
205 2005-03-23 Gov's brief - to make GFE work together
206 Tr. 313~320 Lin's speed disk, mounting plate re-design
210 Tr. 627~628 Motion to exceed scope of direct denied
211 Tr. 802~856 Sample of Rod Shank's evasive testimony
216 Tr. 871 Mr. Shank never worked at construction site
217 Tr. 886~887 Default not on items like joint compound
218 Tr. 1428~1450 Mr. Peach Direct for Government
230 Tr. 1594~1596 Mr. Peach did not know 120VAC circuit
231 Tr. 1597 Mr. Peach didn't know interconnection circuitry
232 16050-50 3.14 Concrete removal, core drilling

PETITION FOR A WRIT OF CERTIORARI

Petitioner S. Emanuel Lin, a proprietary electrical contractor, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Federal Circuit affirming Government's denial of his claim for monetary compensation under Contract Disputes Act of 1978, 41 U. S. C. §§ 601~613 following a termination of his contract for default.

OPINIONS BELOW

The order of the United States Court of Appeals for the Federal Circuit in Appendix on page 18 ("App. 18") is unreported. The opinion of the United States Court of Federal Claims at App. 23 is reported at 61 Fed. Cl. 638.

JURISDICTION

The Federal Circuit entered its judgment on August 4, 2005. On Monday September 19, 2005, Petitioner filed a petition for panel rehearing, which was denied on October 11, 2005. App. 22. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the Federal Circuit was invoked under 28 U.S.C. § 1295(a)(3). The jurisdiction of the Court of Federal Claims was invoked under Contract Dispute Act of 1978, specifically 41 U.S.C. §609 (a) (1).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." The case also involves following Federal Acquisition Regulations:

FAR 52.211-10 *Commencement, Prosecution and Completion of Work*,
FAR 52.243-4 *Changes*,
FAR 52.245-2 *Government Property*,
FAR 52.245-4 *Government-Furnished Property*,
FAR 52.249-10 *Default*,

STATEMENT

In 1998, Government procured certain equipment to modernize a half-century old hydro power plant at a total cost of $2,043,159.00. App. 198~120. It then awarded Mr. Lin on November 5, 1998 a contract to provide necessary retrofit and installation of these government-furnished equipment (GFE) at $1,265,110. The.

For March 3, 2000 completion, App. 96, "Government furnished property . . . will be available no earlier than as follows: GOVERNOR Equipment (October 1998), EXCITATION Equipment (January 1999), SCADA System (July 1999)." App. 179.

Upon notice to proceed on December 9, 1998, Mr. Lin promptly visited and ultimately relocated to the job site on February 14, 1999 to prepare for the initial installation of governor and exciter equipment. App. 104, 105.

But governor and exciter equipment with "[s]upplier's detailed assembly and foundation drawings", App. 87, and other installation manuals and wiring diagrams, did not arrive in full until late August 1999.

"[I]n view of the necessity to compensate for the late availability of Government furnished governor and excitation equipment", on November 24, 1999, both parties "understood and agreed that . . . the time for performance of all work under clause 00800-1 is EXTENDED 150 calendar days". App. 96. The "clause 00800-1" refers to paragraph "1 [FAR]

52.211-10 *Commencement, Prosecution and Completion of Work*" in section 00800 of the contract. App. 79.

Liquidated damage clause required "[w]ork activities shall be planned and scheduled so that all work, installation, wiring, auxiliary devices, operational testing, and repair of malfunctioning equipment does not cause any one of the five generators to be out of service for a total of twenty-one (21) calendar days." App. 85.

The "repair of malfunctioning equipment", GFE or Mr. Lin's, won't be easy if we put them together all at once; the symptom exhibited thereafter does not have clearly indication of its source(s) due to sophisticated interaction among them.

In response, Mr. Lin, an experienced computer system integrator in instrumentation and process control, submitted such an installation plan on the 25th day of the contract with his justification as follows, App. 104:

> "I believe altering only one major component of a generator at a time would help us isolate and identify the problem more easily when thing doesn't go as we have expected."

Government on December 2, 1999 ultimately approved such plan. App. 113. It would first proceed the GFE installation to a stage that it could be finalized in one week of generator outage for each type of GFE. App. 105.

The installation of the GFE began on January 6, 2000, App. 115 with Mr. Gary Horner working on site half-time as mechanical engineer for the first two weeks, joined by Mr. Juriy Dubinin as full-time electromechanical engineer and two youngsters as helpers. App. 117.

After completed the placement of all exciter equipment, the construction moved to install governor equipment. However, on February 24, 2000, Mr. Lin and Mr. Dubinun, discovered and reported in writing, App. 133, substantial defects

in the design and manufacturing of governor parts that needed to be assembled first to proceed further.

The contract provides "[t]he Contractor will not be held responsible for manufacturing errors or errors in the manufacturing errors or errors in the manufacturer's drawings." App. 87.

In his February 24, 2000 daily construction quality control (CQC) report, App. 133, Mr. Lin also advised the Government that the defects would "sever[e]ly delay the completion of the project". This was a dramatic change to his assessment made a day early as noted in Government's conversation record that "[h]e believes that the dates in his latest proposed schedule are still achievable." App. 131. pp2.

Responding to the said CQC report, governor manufacturer's field engineers arrived at the job site to investigate and removed several of them off site for corrective action. App. 135, 147. Mr. Meier, one of the engineers, "observed that Aptus is inexperienced. However, he did not express urgent, specific problems or deficiencies." App. 13[illegible] pp2.

As of the date of default termination on June 26, 2000, substantial amount of governor parts remained off-site, as the same set of defects applied to all five generators. Government did not know the state of their repair. App. 142, 146.

The exciter installation could not proceed due to the need to tear apart a functioning generator. The destruction was irreversible.

The SCADA equipment was not delivered until May 7, 2002, almost two years after Mr. Lin's default termination, App. 180. An experienced SCADA designer and constructor, Mr. Lin already said on February 23, 2000: "he is reluctant to discuss dates until he has touched the SCADA equipment." App. 132, pp 11. Without functioning SCADA, Mr. Lin's

neutral grounding equipment could not work.

February 24, 2000 is a date after the 150 days contract extension, App. 95, was executed to compensate the initial late availability of governor and exciter equipment in 1999. FAR 52.243-4 *Changes* only compensates past delay that had ceased to exist.

Since the parties had yet to establish a new contract completion date for the newly discovered defective governor parts on February 24, 2000 and the uncertain delivery of $902,930.00 SCADA equipment, the contract was terminated for default on an invalid July 31, 2000 contract completion date.

Mr. Lin and Mr. Dubinin had been working as electrician and laborer during the first period of construction. As of February 24, 2000, Mr. Lin had installed all governor and exciter equipment on site. With no further construction to be had and in anticipation of the lengthy submittal to resume for the revision of those Voith parts, Mr. Lin did not expand his staff.

Sault Ste. Marie, Michigan is a small remote border town where no American TV programs were in the public airway then. Mr. Lin never bothered to have a TV in his apartment. Without friend and family in town, Mr. Lin worked on the project almost 24-7, even after February 24, 2000, other than essential eating and sleeping. It was his goal to finish the project as quickly as possible to return to his family.

For the 565 days of performance, Mr. Lin was paid a total of $56,497 for his bond premium and mobilization to the job site. App. 99, 100, 153. With $1,188,613 remaining, Mr. Lin's de-listed surety, Chatham Reinsurance Corporation, tendered L&S Electric, App. 153, on September 8, 2000

to complete the contract by October 19, 2001 for $1,350,000. App. 157. In year 2000, L&S was a 246-person company with annual revenue of $40.034 million. App. 160.

Chatham instituted a lawsuit in Texas court against Mr. Lin on November 2, 2000 to recover the $188,887 and other costs it had incurred under its performance bond No. H000530. App. 151. In preparation to answer Chatham's complaint, Mr. Lin was surprised to discover from Federal Registry, App. 138, that its Certificate of Authority as an acceptable federal surety had been revoked since March 31, 2000, three months prior to Mr. Lin's default termination. After adverse summary judgment for $205,599.90, Mr. Lin paid Chatham $175,000, App. 101, and secured and filed a release of judgment on January 15, 2003.

On November 7, 2000, less than two months into its contract, L&S informed the Government the following:

> "We have observed that most of the drawings containing electrical wiring information for the plant were not up to date. The switchboard and protection relay drawings were missing, and the existing drawings were not correct (did not reflect the equipment that was currently installed)." App. 161

The missing "switchboard and protection relay drawings" were needed to provide their replacement in cabinets with interface to be added to communicate with all three GFE.

On March 16 and April 26 of 2001, L&S submitted the "protection relay", i.e. instrument transformer cabinet and switchboard designs as T19.0 and T20.0 respectively, App. 162, 164. It also notified Government that "[t]he design contains many errors because L&S lacks detailed, reliable data." App. 163.

It was Government's responsibility to provide detailed drawings for the said design under contract at page 01100-10:

> "1.20 DRAWINGS AND MANUALS
> Existing drawings and manuals required for the work will be available to the Contractor at the powerplant, ... Drawings and manuals for new Government-furnished equipment will be made available as they are received."

In response, Government issued L&S two contract modifications, P012 and P016 at a total cost of $70,000 to prepare 12 record drawings that "shall show the true condition of pre-existing and newly installed equipment and appurtenances." App. 167, 171.

It took one year for L&S to submit its revised designs as T19.1 and T20.1 with substantial variances on March 8 and 22 of 2002 respectively. App. 173, 174.

Power plant automation project was meant to reduce labor cost by using fewer power plant operators. In anticipation of such automation, Government had not been replacing the retired operators with new ones. As the automation project dragged on, Government did not have enough operators to fill the 24-hour shifts. When the shortage became so critical that Government issued a contract modification to L&S on May 2, 2002 to bring the power plant on automation by September 30, 2002 for $224,903.25. App. 177. Government paid but many generators remained out of service beyond this new contract completion date. App. 188~193.

L&S arrived at the power plant to begin the construction on April 8, 2002. (*See* "THIS IS THE K'S FIRST DAY ON SITE" at App. 176) The computer software that produced the report also calculated the date of the report as L&S' "571"st day into its contract as shown at the upper right hand corner. This is six more days longer than Mr. Lin's entire contract length.

According to Government's monthly power production

& distribution reports, App. 186~193, as of the discovery cutoff date, Unit#1 was out of service for an accumulated 51.80 days, Unit#2 for 70.07 days, Unit#3 for 63.31 days, Unit#3A for 64.10 days and Unit#10 for 270.53 days, or roughly nine months. It substantially exceeded the 21 days requirement of the contract. App. 85.

Unit#1, #2 and #3 are identical generators. When one GFE failed to work on the first unit, there is no need to have them repeated on all other units until a solution is found.

On the 25th day of the contract, Mr. Lin already foresaw the need to "alter[] only one major component of a generator at a time". App. 104.

The wisdom in taking such approach is particularly akin in light of Unit#10's 9 months out of service time as of the discovery cutoff date. Unit#10 power plant had been working in the past, despite its lack of reliable as-built drawing. Since the contract allowed the existing components, such as "the existing 51, 59, & 87 protective relays" to be "re-used", App. 175, Mr. Lin chose to re-mount them in a new cabinet and reconnect the existing wires to minimize unknown factor that new components may bring to the environment.

However, L&S initially pursued a design with all new components, App. 175, and Unit 10 remained out of service for at least 10 months. To fix the problem, it gradually brought back some of the existing components. A contract modification dated January 7, 2004, App. 196, was still related to fixing the problem at Unit 10 while its contract reached $2,172,081.65 from the original $1.35 million.

During the trial, Mr. Lin attempted to address the defects alleged in HDC's report that was attached to Government's show cause notice to Mr. Lin. But Government objected. It followed with a clear representation to the court to

the contrary that "the termination for default was not on the basis of items such as the wrong joint compound." App. 217, trial transcript 886, lines 21~23, or "Tr. 886:21~23".

With such representation, Mr. Lin was unable to address the court his reasoned use of roller type pipe cutter. Relying on the said report, trial court found Mr. Lin in clearly violation of the contract specification at App. 185, not knowing such requirement had been deleted through L&S' contract modification P0023 at App. 184, pp5.

But Mr. Rod Shank, the author of HDC report, never worked in the construction, App. 216, Tr. 871, to know such and many other proven practices in the industry.

Mr. Lin had been accused of violating the Davis-Bacon Act during his performance of the contract. Mr. Lin had single-handedly completed three design-build SCADA projects, working as computer system designer and programmer down to electrician, mechanics and trench excavator. No laborer had been hired to assist him before.

The controversy involved two new high school graduates brought into the power plant during Mr. Lin's initial construction between January 6 through February 24 2000. Knowing such attack at trial would put Mr. Lin's character in question and prejudice the effectiveness of his testimony, Mr. Lin made a request on October 23, 2003 for DOL to resolve the dispute, App. 201. On October 27, 2003, Mr. Lin moved the court to exclude the trial of labor issues. App. 202. The court denied his motion without prejudice.

During the trial and in its pre- and post-trial briefs, Government repeatedly raised the labor issue to support its default action, knowing fully and under Mr. Lin's objections that the trial court had no jurisdiction on the matter.

Government never submitted its fraud claim against

Mr. Lin to the Contracting Officer for a decision. It never asserted a counter claim in its response to Mr. Lin's first amended complaint. Government knew it had allowed Mr. Lin to serve as a mechanical engineer for the contract soon after he brought to Mr. Erforth's attention in March 1999, among others, that the outer diameter taken on a spinning generator axial could not be relied upon to produce a snot-tight speed tooth assembly's inner circle to clamp thereupon. App. 105, 107, 108, 112.

Even though the court found no bases to uphold the default terminate on the alleged fraud and labor violation, the prejudice was beyond repair. For one thing, Mr. Lin noticed that many attorneys shied away from him after reading Contracting Officer's decision with such allegation or court record. We could prevent such prejudice through motion in limine in a jury trial, but not in a court sitting without jury.

Following the court's denial of its motion to exceed the scope of Mr. Lin's direct testimony in its cross examination, App. 210, tr. 627~628, Government presented its solo direct testimony for 25 minutes by Mr. James Peach, a non-Contracting Officer. App. 218, Tr. 1428~1450.

Mr. Lin followed with extensive cross-examination of Mr. Peach's direct testimony for Government. As we search the pdf file of trial court's opinion, we can not find the citing of any transcript paged between 1428 and 1450.

During the cross examination, Mr. Lin was surprised to find that Mr. Peach, a defecto automation project manager per his own testimony, App. 223, Tr. 1438:23 ~ Tr. 1439:6, in charge of three supply contracts and Mr. Lin's at a combined value over $3.3 million, did not know that 120VAC is an electric circuit at the power plant. App. 230, Tr. 1594~1596.

Further cross examination of Mr. Peach revealed that he could not read the electric drawing to know that the interconnect drawing he had complained about Mr. Lin's submittal deficiency had been provided in supplier's drawing. App. 231, Tr. 1597:14~24.

Similarly, Mr. Peach complained about Mr. Lin's failure to submit "water control plan for core drilling", App. 224, Tr. 1441:1, while not knowing that contract contains entire specification on core drilling at App. 232. It is essentially what everybody does in core drilling, even without specification. Core drilling has to limit the water to such a small amount that it would not be diluted not to serve as a lubricant to the drill bit. There is no flooding to be concerned.

Mr. Peach provided false testimony to state Plaintiff's exhibit 269, "a handwritten submittal list prepared by our former Chief of our Electrical Branch, Don Erfourth" "should logically be provided under the Aptus contract. App. 220, Tr. 1432:10~ 13. The list is reproduced at App. 118~ 130.

The list contained substantial amount of "ABB", "Voith" and "SCADA" submittals at App. 120, 122, 123, 124, 125, 127, 129, 130. Contrary to his testimony at trial, Mr. Peach already agreed the following per his own conversation record at App. 131:

4. He called our attention to page 16050-6 [App. 88] of the specification where it points out that shop drawings from Aptus are not required in cases where drawings from the supply contractors are available. We agree.
5. Mr. Lin is ... He appears to be in general agreement and said that we will get required submittals.

During the trial, the court used the word "evasive" eleven times, App. 211~215, to describe Mr. Rod Shank, the author of HDC report which recommended termination of

Mr. Lin's contract. In particular, the court observed the following at App. 211, Tr. 802:6~8:

> THE COURT: And while the Court has never seen you before the Court sees you as a bright young man. And I don't see that as your personality.

That was exactly what Mr. Lin had perceived in reading his HDC report and characterized his attack on Mr. Lin's work like a "Pharisees". The reversal in the use of roller type pipe cutter is one example.

As Mr. Lin's direct witness, the Contracting Officer provided false testimony outside of the question posted by Mr. Lin to state about Mr. Lin's Savannah project, App. 27:

> " They considered Aptus Company to be incompetent and wanted to get rid of it, and [termination for convenience] was a convenient way of doing it." Trial Transcript (Tr.) 1321.

The fact is Mr. Lin never performed the Savannah project other than a site visit after the contract award to be incompetent. Contrary to his testimony, Contracting Officer stated in defending Mr. Lin's post-award protest, App. 103:

> "7. The preaward survey is sufficient, but it is necessary to amplify on the problems Aptus may have had with the the Savannah District Corps of Engineers contract. Aptus's contract with the Savannah District was not terminated for default but rather by agreement of the parties."

The issue of Mr. Lin's competency in performing the instant contract should have been raised in Government's direct testimony by the Contracting Officer to afford Mr. Lin an opportunity to tell his side of story.

If Mr. Lin were incompetent, he would not have caught the problems in governor's parts manufacturing in his first

month at the job site. App. 105~112. How was Mr. Lin performing on the date of default termination?

REASONS FOR GRANTING THE PETITION

A dispute in government contract has rarely reached the Court in recent years not only because the law is well settled, but the inconsistency of rulings can never happen when only Federal Circuit and the Court of Federal Claims can have the original jurisdiction.

In preparing this petition, Mr. Lin had searched the archive of the Court's opinions containing words "government" and "contract". Mr. Lin read the search return up to the 1940 era and did not find appropriate precedent for the questions raised. Mr. Lin believes it is because we have left the brick-and-mortar contracts behind and usher in a more complicated and technical one like Mr. Lin's.

Mr. Lin would certainly like to see the development of a scientific "DNA" test to measure the progress of a technical contract so that no innocent contractor who failed to satisfy Government's need would be put to "death" by a 25 minutes of testimony from someone who does not know what 120VAC is, or by a standard set to measure amount of billable contract line item as progress, App. 52, while ignoring $2.0 million worth of GFE left un-delivered or un-installed.

Mr. Lin envisions the beauty of a nation where justice is provided to all, with or without an attorney, or be discriminated due to the lack of them. A country where a case is won or a right is respected only through powerful attorney is wrong. During the Katrina flooding in New Orleans, Mr. Lin was quite moved to see from the TV how Coast Guard helicopters tirelessly plucked people, all kind of people, even being considered as fools by some Land-Rover owners for staying behind, out of their distress. Coast Guard did not

dispatch its multi-million dollar helicopter and highly trained rescuers to only those people meeting certain criteria, nor did they get to do it after its submittals are approved.

"It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notion of what is fair and right and just." *Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950)

Due process is violated if a practice or rule "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

Standing by itself, the phrase "due process" would seem to refer solely and simply to procedure, to process in court, and therefore to be so limited that "due process of law" would be what the legislative branch enacted it to be. But that is not the interpretation which has been placed on the term. "It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process 'due process of law' by its mere will." *Murray's Lessee v. Hoboken Land and Improvement Co.* 59 U.S. (18 How.) 272, 276 (1856).

Procedural Due Process

The default termination in question is un-deniably a legal process. But is it 'due process of law'? To this the answer must be twofold. We must examine the *Default Clause* in Federal Acquisition Regulation itself, to see whether this process be in conflict with any of its provisions. If not found

to be so, we must look to those settled usages and modes of proceeding existing in the common.

The Fifth Amendment clause as it binds the Federal Government coexists with a number of other express provisions in the Bill of Rights guaranteeing fair procedure and non–arbitrary action, such as jury trials, grand jury indictments, and nonexcessive bail and fines, as well as just compensation, whereas the Fourteenth Amendment clause as it binds the States has been held to contain implicitly not only the standards of fairness and justness found within the Fifth Amendment's clause but also to contain many guarantees that are expressly set out in the Bill of Rights. In that sense, the two clauses are not the same thing, but insofar as they do impose such implicit requirements of fair trials, fair hearings,

Finally, it should be noted that some Fourteenth Amendment interpretations have been carried back to broaden interpretations of the Fifth Amendment's due process clause, such as, e.g., the development of equal protection standards as an aspect of Fifth Amendment due process.

To hold that only historical, traditional procedures can constitute due process, the Court said, "would be to deny every quality of the law but its age, and to render it incapable of progress or improvement." *Hurtado v. California*, 110 U.S. 516, 528–29 (1884).

And the opinion cites and relies upon a decision of the Supreme Court of Wisconsin in the case of *Rowan v. The State*, 30 Wis. 129. In that case, the court, speaking of the Fourteenth Amendment, says: *Id.* at 520–521

> But its design was not to confine the States to a particular mode of procedure in judicial proceedings, and prohibit them from prosecuting for felonies by information instead of by indictment, if they chose to abolish the grand jury system. And the words "due

> process of law" in the amendment do not mean, and have not the effect, to limit the powers of State governments to prosecutions for crime by indictment, but these words do mean law in its regular course of administration, according to prescribed forms and in accordance with the general rules for the protection of individual rights. Administration and remedial proceedings must change, from time to time, with the advancement of legal science and the progress of society, and if the people of the State find it wise and expedient to abolish the grand jury and prosecute all crimes by information, there is nothing in our State Constitution and nothing in the Fourteenth Amendment to the Constitution of the United States which prevents them from doing so.

Therefore, in observing the due process guarantee, it was concluded, the Court must look "not [to] particular forms of procedures, but [to] the very substance of individual rights to life, liberty, and property." The due process clause prescribed "the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. . . . It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law. *Id.* at 531–32, 535, 537

But "due process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, "due process" cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness

between man and man, and more particularly between the individual and government, "due process" is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process. *Joint Anti–Fascist Refugee Comm. v. McGrath* 341 U.S. 123, 162~163 (1951).

Whether the procedure leading to default termination and the proceedings upholding the same duly observed "the rudiments of fair play," *Chicago, M. & St. P. R. Co. v. Polt,* 232 U.S. 165, 168, cannot, therefore, be tested by mere generalities or sentiments abstractly appealing. "The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment." *Id.* at 163.

CONCLUSION

Petitioner Mr. S. Emanuel Lin respectfully prays that a writ of certiorari be issued and through this "perfect storm in contracting" valuable precedents be established to guide the nation's contracting industry toward less disputed-prone and more productive commerce. It would also lighten the caseload over the nation's courts as people would clearly know that they have wronged.

Respectfully submitted

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

05-5030

S. EMANUEL LIN
(doing business as Aptus Company),
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

DECIDED: August 4, 2005

Before RADER, BRYSON, and LINN, *Circuit Judges*.
RADER, *Circuit Judge*.

Mr. S. Emanuel Lin d/b/a Aptus Company (Mr. Lin) appeals the decision of the United States Court of Federal Claims denying Mr. Lin's claim of wrongful termination of a contract with the United States Army Corps of Engineers (Government). Because substantial evidence supports the Court of Federal Claims' finding that the Government terminated Mr. Lin for default, this court *affirms*.

I

Mr. Lin won a contract to update and automate hydroelectric power equipment at the Saulte Ste. Marie Hydroelectric Power Plant in Michigan for $1,225,110. *Aptus Co. v. United States*, No. 01-362C, slip op. at 3 (Fed. Cl. Aug. 30, 2004) (Decision).

Although Mr. Lin was the lowest bidder during the contract solicitation, the Government became concerned that Mr. Lin, as a single-man operation, did not have the expertise and staff required to complete the contract. *Id.* at 4. Mr. Lin

allayed the Government's concerns by providing written assurances that he would recruit workers with the necessary experience to complete the contract. *Id.* Consequently, Mr. Lin won the bid and received the contract.

The contract required Mr. Lin to install government-furnished equipment (GFE) including governor, excitation, Supervisory Control and Data Acquisition (SCADA) equipment, and to design and install a neutral grounding system, a new switchboard and switchgear for Unit 10, a 125 VDC distribution panel, and several other smaller items. *Id.* at 3 & n.5. The contract required completion within 450 days after the Government issued a Notice to Proceed, which issued on December 9, 1998. *Id.* at 4. The parties executed a bilateral agreement on November 24, 1999, extending the deadline by 150 days due to the Government's delay in delivering the GFE, thereby moving the deadline to July 31, 2000. *Id.* at 4 n.7.

On January 14, 2000, the Government issued a cure notice to Mr. Lin because he "was unable to make sufficient progress under the contract, failed to comply with required submittals, failed to provide a realistic work schedule, and had inadequate staffing to perform the work required under the contract." *Id.* at 4. Mr. Lin responded and the cure notice did not mature into a termination for default at that time. *Id.* at 6. However, the Government requested the Hydroelectric Design Center (HDC) to inspect Mr. Lin's work. *Id.* The HDC prepared a full report of its findings and recommended terminating Mr. Lin for default. *Id.*

The Government issued a show cause notice to Mr. Lin on May 1, 2000, noting the findings of the HDC and Mr. Lin's failure to cure the conditions in the January 14, 2000 cure notice. *Id.* After allowing Mr. Lin an opportunity to cure the conditions in the show cause notice, the Government terminated the contract for cause on June 30, 2000. *Id.* at 7.

Mr. Lin, acting *pro se*, filed suit in the Court of Federal Claims alleging wrongful termination and modification

of the contract. *Id.* at 2. The trial court upheld the Government's termination for cause based on Mr. Lin's lack of satisfactory progress under the contract, *Id.* at 34, and violations of contract requirements, *Id.* at 37. Mr. Lin appeals to this court, which has jurisdiction pursuant to 28 U.S.C. § 1295(a)(3).

II

This court reviews issues of contract interpretation *de novo*. *Galaxy, Inc. v. United States*, 998 F.2d 953, 957 (Fed. Cir. 1993). This court reviews factual findings for clear error. *Merck & Co. v. Teva Pharms., Inc.*, 395 F.3d 1364, 1368 (Fed. Cir. 2005). A factual finding is clearly erroneous when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Mr. Lin argues that the trial court applied the wrong standard in reviewing the Government's decision to terminate the contract for cause. The trial court, citing *Seaboard Lumber Co. v. United States*, 903 F.2d 1560, 1562 (Fed. Cir. 1990), properly stated that it was reviewing the termination for default de novo. *Decision* at 11. The trial court went on to provide a forty-page opinion thoroughly analyzing the facts and issues under a *de novo* standard. This court finds that the trial court applied the correct standard of review.

Mr. Lin next argues that the Government did not carry its burden of proof to establish default termination. As regards default termination for lack of progress, the trial court found in favor of the Government based on (1) the percentage of work completed and the amount of time remaining under the contract, (2) the problems with subcontractors and suppliers, (3) the failure to meet goals for progress of the work, and (4) the over-all evidence of Mr. Lin's failure to prosecute his work under the contract. *Id.* at 31. Specifically, the trial court found that "(i) approximately 68% of the work remained to be completed under the contract at the termina-

tion date, and, at best, a mere 23.33% of the construction time remained, (ii) [Mr. Lin] experienced significant difficulties with subcontractors, [ ] (iii) Mr. Lin was unable to conform to the scheduling representations he made," and (iv) Mr. Lin's efforts frequently resulted in work that was unsatisfactory. *Id.* Much of the evidence supporting these factual findings was introduced by and through Mr. Lin. These findings are not clearly erroneous.

The Court of Federal Claims also ruled against Mr. Lin's defense of excusable delay. Specifically, the trial court did not consider the Government's delay in delivering the GFE as creating excusable delay because the parties agreed to extend the contract deadline by 150 days as compensation for that delay. *Id.* at 32. The trial court also did not consider delays caused by late delivery of the SCADA equipment because the termination decision did not rely on the non-completion of the SCADA installation. *Id.* The trial court considered, and rejected, Mr. Lin's argument that the GFE was incomplete and had defective parts upon delivery, thereby causing excusable delay. *Id.* at 33.

Mr. Lin had the burden to demonstrate that the defects in the GFE delayed activities on the critical path to the completion of the contract. The trial court found that defects of the GFE did not affect the critical path because Mr. Lin "had ample design work that was able to be completed without reference to the GFE." *Id.* Mr. Lin also represented to the Government that his updated schedules were achievable despite the problems with the GFE. Because substantial evidence supports these facts, this court affirms the Court of Federal Claims' finding that Mr. Lin's delay was not excusable.

Because this court upholds the Government's default termination for lack of sufficient progress, this court does not reach the additional grounds upon which the Court of Federal Claims sustained the Government's default termination.

United States Court of Appeals for the Federal Circuit

05-5030

S. EMANUEL LIN
(doing business as APTUS Company)
Plaintiff-Appellant,

v.

UNITED STATES
Defendant-Appellee

ORDER

Before RADER, Circuit Judge, BRYSON, Circuit Judge, and LINN, Circuit Judge.

A petition for rehearing having been filed by the APPELLANT, UPON CONSIDERATION THEREOF, it is ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate of the court will issue on October 18, 2005.

FOR THE COURT,

Jan Horbaly
Clerk

Dated: October 11, 2005

cc: S. Emanuel Lin
Andrew P. Averbach

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

OCT 11 2005

JAN HORBALY
CLERK

LIN V US, 05-5030
(CFC - 01-CV-362)

****

* Note: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public record. *

****

In the United States Court of Federal Claims

No. 01-362C

(Filed: August 30, 2004)

* * * * * * * * * * * * * * * * * * * *

APTUS COMPANY,

Plaintiff

v.

THE UNITED STATES,

Defendant

FAR § 52.249-10 Termination for Default: Construction Contract; Failure to Make Progress; Justification of Default by Evidence of Fraud Offered Post-Hoc Disallowed Based on Waiver; Material Breach

* * * * * * * * * * * * * * * * * * * *

S. Emanuel Lin[1], Houston, Texas, *pro se*, for plaintiff.

Andrew P. Averbach, Washington, D.C., with whom was *Peter D. Keisler*, Assistant Attorney General, for defendant.

OPINION

Reginald W. Gibson, *Senior Judge*

I. INTRODUCTION

The present action arises from the government's termination for default of plaintiff's, Aptus Company's, contract to install government-furnished equipment, and design, manufacture, and install contractor-furnished equipment at the government-owned and operated Sault Ste. Marie Hydroelectric Power Plant (the "Soo") in Sault Ste. Marie, Michigan.[2] The contractor's right to proceed with work on the contract at issue, [end of Page -1- in original opinion]

---

[1] A sole proprietor doing business as (d/b/a) Aptus Company.

[2] "Sault Ste. Marie" and "St. Mary's Falls" are used interchangeably throughout the record in this case. For the sake

DACW35-99-C-0001, was terminated for default on June 26, 2000, for failure to make progress,[3] unsatisfactory work and unsound work methodology, and violations of the Davis-Bacon Act. At trial, the government also averred fraud as an additional *post-hoc* rationale to justify the termination decision. Plaintiff, proceeding *pro se*, alleged five (5) counts as separate bases for recovery in his First Amended Petition, which are as follows:

(i) wrongful termination of contract;
(ii) government's breach of contract;
(iii) government's changes to the contract;
(iv) government's breach of federal suretyship law; and
(v) compensation for unjust enrichment.

After significant discovery, we heard this matter over a two-week period. At the close of plaintiff's case-in-chief, the government made a motion for entry of judgment in its favor on all counts, pursuant to RCFC 52(c). We took said motion, and plaintiff's response thereto, under advisement. For the reasons set forth in detail below, we hold that the decision to terminate Aptus for default is supported by substantial evidence, and that Aptus failed to meet his burden with respect to his defense of justifiable delay. Therefore, we uphold the defendant's default termination. Consequently, plaintiff's

---

of simplicity and continuity, we shall adhere to the "Sault Ste. Marie" moniker when referring to the town wherein the contract was to be performed, and "the Soo" when referring to the power plant itself.

[3] The government's Notice of Default Termination, issued on June 26, 2000, and the subsequently issued Contracting Officer's Decision, dated June 30, 2000, both cite unsatisfactory work product and unsound work methodology as grounds for termination, as well as failure to make progress. As the decision below explains, we find these issues to be inextricably linked, because it defies logic to include unacceptable work product as "progress."

claim of wrongful termination is DENIED.

Further, we hold that the claim of government breach of contract, based entirely on the unavailability of the GFE, merges with, and is subsumed by, plaintiff's affirmative defense of justifiable excuse. Plaintiff's third claim seeking compensation for changes to the contract is DENIED, as plaintiff failed to meet his burden with respect to such claim. Further, we DISMISS the claim premised upon an alleged breach of suretyship law for want of jurisdiction pursuant to RCFC 12(b)(1). Finally, we find that plaintiff's claim for unjust enrichment is, in fact, an attempt to recover for the work he did during his performance of the contract, and an attempt to recoup the reprocurement costs that the government collected from his surety. Thus, it is not an equitable claim: it is a third restatement of his wrongful termination claim. Consequently, Count V is also merged with, and subsumed by, Count I. Our holdings herein render defendant's motion for entry of judgment in accordance with RCFC 52(c) moot, and it is therefore DENIED.

Page -2-

II. BACKGROUND

A. The Purpose of the Contract

The instant contract was issued by the United States through the U.S. Army Corps of Engineers, Detroit District (USACE), as part of a plan to update and automate the equipment at the government owned and operated hydroelectric power plant at the Soo. That facility provides power to the USACE's Soo Area Office, which encompasses the Soo Locks—a group of locks that facilitates commercial ship traffic between Lakes Huron and Superior. Any excess power generated by the Soo is sold to Edison Sault Electric Company (ESELCO), which in turn supplies power to the eastern portion the Upper Peninsula of Michigan. In total, four contracts were issued as part of this Automation Project: three equipment supply contracts, and one installation contract. These four contracts, collectively, call for the installation of automation equipment at five separate generating units at the Soo: Units 1-3, 3A, and 10. The equipment contracts were

issued to: Voith Hydro, Inc. for governor equipment, Asea Brown Boveri, Inc. ("ABB") for excitation equipment, and Scipar, Inc. for SCADA equipment.[4] The way the Automation Project was structured, a fourth party was required to install the government-furnished governor, excitation, and SCADA equipment acquired under the supply contracts. In addition to installing the GFE, the installation contract required the contractor to modify some portions of existing equipment, and design and install additional equipment necessary for automation.[5]

B. The Solicitation, Pre-Award Survey, and Award

On July 9, 1998, the government issued a solicitation for bids for the installation contract, with completion required within 450 days from the Notice to Proceed. Plaintiff responded to the government's solicitation for the instant contract, and was the low bidder with a bid of $1,265,110.00.[6] The government confirmed that plaintiff's bid was responsive to the solicitation, and turned its attention to ascertaining whether plaintiff was

a responsible bidder with respect to the contract. To make its responsibility determination, the government conducted a

---

[4] SCADA stands for Supervisory Control and Data Acquisition.

[5] Specifically, the installation contract requires the contractor to design and install a neutral grounding system, a new switchboard and switchgear for Unit 10, a 125 VDC distribution panel, and several other smaller items.

[6] The bid amount included a line item for "Skilled Labor" that was intended by the USACE to be an option. After entering into the contract, a modification was issued to subtract that line item from the contract amount, which reduced the total contract price by $40,000.00 to its current $1,225,110.00 price.

pre-award survey.

During its pre-award survey, the government learned that plaintiff had performed three prior government contracts successfully. Those contracts all involved designing and installing SCADA equipment. The government also learned that plaintiff had been awarded an installation contract by the USACE for the Savannah District Power Plant. Said contract was terminated for convenience. The Contracting Officer charged with administering the contract at bar, Mr. George Fedynski, contacted the Savannah District and found that they considered termination for default. "They considered Aptus Company to be incompetent and wanted to get rid of it, and [termination for convenience] was a convenient way of doing it." Trial Transcript (Tr.) 1321. Concerned respecting the foregoing, Mr. Fedynski participated in the pre-award survey himself, which he does not ordinarily do.

The government learned that Aptus was a single-man operation, consisting only of Mr. Lin. Mr. Fedynski "was very concerned that Mr. Lin did not have any permanent staff." Tr. 1336. As stated above, Mr. Lin had significant experience with SCADA systems, and also holds a B.S. degree in Electrical Engineering, and an M.S. degree in Computer Science. However, Mr. Lin had no prior experience with hydroelectric power plant installation work. Mr. Lin also had no experience with governor or excitation equipment. To allay Mr. Fedynski's concerns, Aptus provided written assurances that he would recruit experienced workers. Relying on (i) these assurances, (ii) Mr. Lin's experience, and (iii) Aptus' ability to obtain the required performance and payment bonds, Mr. Fedynski found that Aptus was a responsible bidder, and thus awarded Aptus the contract at bar on November 5, 1998. A Notice to Proceed was issued and acknowledged on December 9, 1998, thereby starting the clock on the 450-day completion deadline of March 3, 2000,[7] set forth in the contract.

---

[7] The original contract completion date of March 3, 2000, was extended by 150 days to July 31, 2000, via a bilat-

C. The Default Termination Decision

The contract and its subsequent performance are explored in detail *infra*; however, a brief introduction to the contract requirements, and the allegedly deficient performance of said requirements, is necessary to establish a framework for the substantive analysis to follow. The contract imposes extensive administrative, design, product, and procedure

submittal[8] requirements on Aptus. In the earliest stages of contract performance, Aptus displayed difficulty meeting these requirements, which, according to the government, are

---

eral contract modification executed on November 24, 1999. This modification was done, in part, because the delivery of the governor and excitation GFE was delayed; the value of the contract did not increase.

[8] "Submittal" requirements are defined by the contract. Under the contract, the contractor is required to submit various information to the government, either strictly for informational purposes, or for government approval. Collectively, these requirements are referred to in the contract, and herein, as "Submittal Requirements." There are four primary types of submittals that Aptus must transmit to the government, pursuant to the contract, to wit: administrative, design, procedure, and product. The following are examples of each submittal type:

- Administrative: e.g., employee lists, contractor's quality control plan,
- Design: e.g., technical drawings for the Unit 10 switchgear design, design for neutral grounding system,
- Product: e.g., the part numbers, catalog information, and specifications for component parts required by the design/installation work, and
- Procedure: e.g., written plan setting forth (i) the disassembly of each generating unit's existing gen-

its primary method of monitoring and measuring progress under the contract. Additionally, Aptus displayed gaps in his understanding of other contract provisions. For example, Aptus submitted his first construction schedule on January 4, 1999, while it was due prior to Christmas 1998. Said overdue schedule, Transmittal 1.0, was disapproved by the government on February 23, 1999. Moreover, the government noted that plaintiff's Transmittal 1.0 failed to take into account at least two significant contract provisions when he formulated his schedule. Namely, Aptus had scheduled the installation of several GFE components prior to the availability of over-water transportation. Said components could not, of course, be transported to their respective power houses and installed therein absent the availability of over-water transportation. Aptus' schedule also reflected generator-outage time in excess of the 21-day outage limitation in the contract.

According to the terms of the contract, disapproved submittals must be revised and resubmitted promptly. Mr. Lin (d/b/a Aptus) resubmitted his construction schedule more than three months later, on May 28, 1999. During the interceding period, the government requested a revised resubmittal from Aptus telephonically, in person, and via written request.

Plaintiff's own testimony and his documentary evidence indicate that the difficulties he encountered with respect to submittal of his construction schedule were not atypical; the record in this case provides numerous examples of delayed and/or delinquent submittals. The government, however, experienced delays of its own relating to delivery of the governor and exciter GFE components. Acknowledging that its

---

erating equipment and (ii) the assembly and installation of the new generating equipment.

In addition to setting forth the required submittals and the contents thereof, the contract also imposes time deadlines on the contractor for submittals.

delay likely hindered Aptus' performance, the government agreed to extend the performance period of

the agreement by an additional 150 days as full compensation for the GFE delivery delays. A bilateral modification of the contract, setting a new completion date of July 31, 2000, was, therefore, executed on November 24, 1999.

On January 14, 2000, just seven (7) weeks after execution of the contract modification extending delivery to July 31, 2000, the government issued a cure notice to Aptus. Said notice averred that Aptus was unable to make sufficient progress under the contract, failed to comply with required submittals, failed to provide a realistic work schedule, and had inadequate staffing to perform the work required under the contract. On January 31, 2000, Aptus submitted a handwritten response to the government's cure notice, advising the government of his hiring efforts. Mr. Lin supplemented his January 31, 2000 response on February 4, 2000, and attached several required submittals to his response.

After reviewing Aptus' response to the cure notice, the government opted to forebear with respect to default termination, but advised Aptus that it was "critical that you have an organization, which includes a correct mix of workers to successfully complete the contract." Plaintiff's Exhibit in evidence (PX) 252. Aptus was also cautioned to comply with the labor provisions set forth in the contract.

Subsequent to the issuance of the cure notice, the Contracting Officer requested that the Hydroelectric Design Center (HDC) - a division of the USACE - inspect the quality and progress of Aptus' work. The HDC inspection, conducted between April 4 and April 6, 2000, uncovered deficiencies in Aptus' work. A full report of the results of the inspection, along with the HDC's recommendation to terminate

Aptus for default, was prepared for the contracting staff[9] in April, 2000. After discussions with his contracting staff, Mr. Fedynski issued a show cause letter to Aptus on May 1, 2000, approximately three months after his decision to forebear on Aptus' termination for default. Therein, the government cited the results of the HDC inspection, and stated that the conditions noted in the January 14, 2000 cure notice had not been cured. The show cause notice required Aptus to respond within ten (10) days, however, Mr. Fedynski granted Aptus' request to extend the time to respond to May 18, 2000. Mr. Fedynski took that opportunity to remind Aptus that his response had to specifically address each condition cited in the show cause notice.

Mr. Lin timely submitted his response to the show cause notice. Mr. Fedynski distributed said response to both his delegates and the HDC for their evaluations. The HDC authored an extensive evaluation of Aptus' response, and concluded that it was

inadequate and unresponsive. On June 3, 2000, Mr. Fedynski agreed to delay his decision regarding termination, at Aptus' request. In the interim, Mr. Lin consulted with members of the contracting staff, and made various attempts to correct the deficiencies noted in the show cause notice in an effort to stave off termination for default.

Finding that, as of June 26, 2000, Aptus had failed to correct and/or excuse the deficiencies cited in the notice to show cause, Mr. Fedynski terminated Aptus' right to proceed under the contract for default, per FAR § 52.249-10. The government issued its findings of fact with respect to the decision to terminate on June 30, 2000.

---

[9] "Contracting staff" is used herein to collectively refer to Mr. Fedynski and his technical and administrative delegates, some of whom were then located at the Soo Area USACE Office, while others worked out of the Detroit District Office of the USACE.

Thereafter, Mr. Lin urged Mr. Fedynski to reconsider the termination, and ultimately submitted a formal request for reconsideration on July 24, 2000. Notwithstanding the foregoing, the contracting staff was singularly unpersuaded. Following thereon, the government entered into a Tender Agreement with Chatham Reinsurance Corporation (Chatham), Aptus' bonding company, on September 8, 2000. The Tender Agreement's terms establish the government's acceptance of Chatham's tender of : (i) L & S Electric as the completion contractor, and (ii) $188,887.00 to compensate the government for excess reprocurement costs.

III. PROCEDURAL POSTURE

Aptus certified and filed his claims against the government on April 16, 2001, seeking an equitable adjustment to the contract and a conversion of the default termination to a termination for convenience. FAR § 52.249-10(c). Furthermore, Aptus asserted that the government materially breached the contract. Additionally, Aptus alleged that the government violated federal suretyship law when it entered into the September 8, 2000 Tender Agreement with Chatham Reinsurance, and that the government was unjustly enriched by Aptus' performance.[10]

The Contracting Officer denied Aptus' claims, and Aptus then timely filed the instant action on June 18, 2001. Aptus' First Amended Petition seeks reversal of the Contracting Officer's decision denying Mr. Lin's April 16, 2001 claims. Specifically, Count I of the complaint at bar asserts wrongful

---

[10] Aptus enumerated several other allegedly wrongful acts purportedly committed by the government. A close reading of these claims, however, reveals that Aptus relies on identical facts and requests identical relief in most of these claims. He simply does it in such a way to make the claims appear distinct by calling each claim something slightly different.

termination for default, and seeks conversion of the default termination to termination for convenience. Aptus avers that his progress delays and submittal deficiencies should be excused based on governmental delay arising from late and/or defective GFE delivery. The second count charges that the

government breached the contract, curiously for some of the same reasons averred in Count I, thus entitling Aptus to damages resulting from said breach. In the third count, Aptus alleges that the government "conspired and ultimately succeeded in the misuse of *Default* clause to change the manner of contract performance and to shed the increased cost of such changes upon Aptus." Compl. 9.[11] Next, Count IV avers "Government's Breach of Suretyship Law." Therein, Aptus alleges that it was unlawful for the government to demand performance from Aptus' surety, Chatham Reinsurance Corporation. This allegation stems from the fact that the government revoked Chatham's certificate of authority as a federal surety on March 31, 2000. In Count V, the last, Aptus asserts that the government was unjustly enriched by Aptus' contract performance, and seeks compensation based on principles of equity.

After extensive discovery, this matter proceeded to trial, with plaintiff appearing *pro se*.[12] Over the course of the two

---

[11] "Compl. __" is a citation to Plaintiff's First Amended Petition.

[12] We note at this posture that the court implored Mr. Lin to retain counsel throughout the pre-trial stage of the proceedings. Self-representation is a daunting task, even if one is learned in the law, for it has often been stated that – 'the attorney who represents himself has a fool for a client.' Mr. Lin's challenge was made even more difficult because he lacks legal training and is not a native English speaker. Nonetheless, as is his right, Mr. Lin instead elected to represent himself, noting to the court that he had been unable to secure counsel on a contingent-fee basis, and did not wish to

week trial, commencing on May 24, 2004, plaintiff introduced 345 exhibits into evidence, and conducted direct examinations of seven witnesses in his case-in-chief.

As we have noted in fn. 12, plaintiff was somewhat disadvantaged by proceeding *pro se*. Given said circumstance, and in the interest of justice, this court diligently examined the entire record in an effort to clearly ascertain the facts of this case, and give plaintiff's claims every reasonable opportunity to prevail, if the facts so warrant.

Page -8-

IV. JURISDICTION

This court has jurisdiction over claims for monetary damages lodged against the United States that arise out of contracts to which the United States is a party. 28 U.S.C. § 1491. Plaintiff's claims in this court were filed only after they were denied by the contracting officer, as required by the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-603. Consequently, Count I of plaintiff's complaint for wrongful termination, wherein he seeks conversion of the default termination to one

---

make substantial outlays for legal fees. Tr. of December 18, 2003 Hrg. On D's Mot. for Sanctions at 18. This, we opine, is one of many "penny-wise, pound-foolish" decisions made by Mr. Lin during the course of these proceedings. Another exemplar is plaintiff's curious decision to present no witnesses on his behalf, other than himself and government personnel that defendant proposed to call in its case-in-chief. This decision was made upon Mr. Lin's realization that he would be obligated to underwrite the travel expenses of additional witnesses. Thus, Mr. Lin placed himself in the awkward predicament of drawing all of the critical testimonial evidence for his case-in-chief from himself, the contracting staff, and HDC personnel (the latter two groups, according to Mr. Lin's own exhibits, unanimously agreed with the decision to terminate Aptus for default). These choices, no doubt, exacerbated plaintiff's uphill battle.

for the convenience of the government, is properly before this court. As previously noted, Count II alleges breach of contract, but the factual averments are, upon closer examination, identical to Count I. Both counts assert that the government caused delays, and then improperly terminated Aptus for default. Since the relief that we may grant for these types of alleged wrongs is governed by the Federal Acquisition Regulations, we can come to a single result. Thus, in our discussion, *infra*, we find that Count II merges with, and is subsumed by, Count I. The third count of the complaint alleges that "Government's Changes to the Contract" unfairly visited increased costs upon Aptus, warranting an equitable adjustment to the contract price. We note that this claim, too, merges into Count I if said count is determined in favor of plaintiff.[13]

Count IV, in contrast to the aforementioned claims, seeks damages for "Government's Breach of Suretyship Law." This is not a cognizable claim over which we have jurisdiction. *United States v. Mitchell*, 463 U.S. 206 (1983). Plaintiff bases his theory of recovery on the March 31, 2000 published decision of the U.S. Department of the Treasury, which revoked the Certificate of Authority previously issued to plaintiff's surety, Chatham Reinsurance Corporation. The Federal Register text contained the government's decision to remove Chatham from the list of approved suretyship providers for the purposes of government contracting, pursuant to 31

---

[13] "Where the contractor has been terminated for default and his claim is for termination for convenience damages on the basis that the default termination was wrongful, this court has held that plaintiff's claims for cost adjustments are mooted by the default and subsumed in the termination for convenience damage claim." *PBI Elec. Corp. v. United States*, 17 Cl. Ct. 128, 130 (1989) (citing *Ralcon, Inc. v. United States*, 13 Cl. Ct. 294, 296 (1987)).

U.S.C. §§ 9304-9308.[14] 65 Fed. Reg. 78 at 21,603 (March 31, 2000). Further, it advised bond-approving officers that they should no longer accept surety guarantees from Chatham. *Id.* Additionally, it counseled that "bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding." *Id.* Thus, Mr. Lin contends that the contracting officer was in violation of this instruction,

Page -9-

therefore in violation of federal suretyship law, and that these violations caused Mr. Lin damages of "at least [] $916,050. 02." Compl. 11. Mr. Lin adduced no testimony at trial relating to this claim, and the only evidence even remotely relating to this issue is the Federal Registry citation, and the Tender Agreement that Chatham and the government entered into after the publication of the revocation.

Our jurisdiction is narrowly defined by Congress in the Tucker Act, and extends to contract claims for money damages against the government, and "money-mandating" provisions[15] of the Constitution, Acts of Congress, or executive regulations, to which the plaintiff alleges a specific entitlement. *See United States v. Testan*, 424 U.S. 392, 397-98 (1976); *United States v. King*, 395 U.S. 1, 2-3 (1969); *United States v. Sherwood*, 312 U.S. 584, 587-88 (1941). For the benefit of *pro se* plaintiff, a "money-mandating" provision is defined as a substantive law that, when viewed on its face

---

[14] 31 U.S.C. §§ 9304-9308 authorize the acceptance of corporate surety companies on bonds given to the United States.

[15] Clearly, the regulation at issue was promulgated to protect the government's interest, not the interests of any other party. No matter how creatively one reads the Federal Registry text cited by Mr. Lin, it is impossible to discern a mandate of payment by the government if a contracting officer fails to heed the warning to acquire a new bond.

and fairly read, plainly mandates compensation by the federal government for any damage sustained by the claimant. *See United States v. Mitchell*, 463 U.S. at 216-17 (quoting *Testan*, 424 U.S. at 400). An illustrative example is the Fifth Amendment's requirement that "just compensation" be paid when the government effects a taking of private property. In contrast, the suretyship provisions that Mr. Lin claims are at issue here contain no such mandate. Thus, this claim fails to fall within our grant of jurisdiction under the Tucker Act. 28 U.S.C. § 1491. We are, therefore, constrained to dismiss this claim for lack of subject matter jurisdiction, pursuant to RCFC 12(b)(1). *See, e.g., Testan*, 424 U.S. 392, *supra.*

Finally, Mr. Lin asserts Count V, entitled "Unjust Enrichment." The relevant portion of the complaint with respect to this count asserts, in its entirety, the following:

> The original contract was to be completed in 450 days at a price of $1,225,000. After 570 days of contract performance under APTUS, Government terminated the contract with a total of roughly $55,000 payment to APTUS and a gain of $188,887 arising out of the performance bond furnished by APTUS. Constructively, not only did the Government receive 570 days, or roughly 3-man-years, of service from APTUS for free, it had a windfall of roughly $125,000 under its failure to deliver Government-furnished property at the time of contract termination. There exists disproportional inequity between the contracting parties and Government's unjust enrichment is obvious.

Compl. 12.

Page -10-

Because we are faced with a *pro se* plaintiff, the court feels an obligation to clarify Mr. Lin's claims where the evidence so permits. We cannot, however, litigate his claims for him. Here, we read plaintiff's allegations as arguing simply that the government received Aptus' services under the contract, and failed to pay Aptus accordingly. Aptus seeks the compensation to which he believes he is entitled under the

contract, and a recapture of the excess reprocurement costs that the government collected from Chatham. Positing these allegations as arising "in equity" as opposed to "at law" is a misstatement of the true nature of the claim. As noted, Aptus is claiming damages for work done under the contract, for which he was not paid. That is a contract claim presented at law; asserting a contract claim nominally as an equitable action (unjust enrichment) does not alter its nature. Since Count V is the third, duplicative, and redundant statement of Mr. Lin's contract claim for wrongful termination, the facts alleged therein are also merged into, and subsumed by, Count I. To the extent that he truly seeks compensation for a contract implied-in-law (unjust enrichment),[16] this court does not have jurisdiction. *See, e.g., Hatzlachh Supply Co. v. United States*, 444 U.S. 460, 465 FN 5 (1980) (citing *Alabama v. United States*, 282 U.S. 502, 507 (1931); *Goodyear Tire & Rubber Co. v. United States*, 276 U.S. 287, 292-293 (1928); *United States v. Minn. Mutual Investment Co.*, 271 U.S. 212, 217 (1926); *Hill v. United States*, 149 U.S. 593, 598 (1893)).

Given all of the foregoing, we find we are now faced with only two cognizable claims, to wit, Counts I and III, and shall decide them both in turn.

V. DISCUSSION

A. Count I – Wrongful Termination

1. Standard of Review

This court reviews a contracting officer's termination for default *de novo*. 41 U.S.C. § 609(a)(3); *Seaboard Lumber Co. v. United States*, 903 F.2d 1560, 1562 (Fed. Cir. 1990). When a contractor challenges the government's default termination of his contract, the government bears the burden of proof as to the propriety of said termination. *See, Lisbon*

---

[16] "[A] contract implied-in-law is one in which no actual agreement between the parties occurred but where a duty is imposed by equity to prevent injustice." *Contel of Cal. v. United States*, 37 Fed. Cl. 68, 72 (1996) (citations omitted).

Contractors, Inc. v. United States, 828 F.2d 759, 765 (Fed. Cir. 1987). The government must establish, by a preponderance of the evidence, that the default termination was justified. *Id.* Thus, if we find that, based on the entirety of the record, the greater weight of the evidence supports the termination for default, we must uphold the termination. If, on the other hand, the evidence is evenly balanced, the government

has not met its burden and the termination shall be converted to one for the convenience of the government, pursuant to FAR § 52.249-10(c).

In the case at bar, the government alleges that the contractor committed fraud in the performance of the contract among the various grounds that it contends justify the default termination. Thus, we note here that proof of contractor fraud must be established by *clear and convincing* evidence. *Daff v. United States*, 31 Fed. Cl. 682, 688 (1994) (citing *Joseph Morton Co. v. United States*, 757 F.2d 1273, 1278-79 (Fed. Cir. 1985)). The clear-and-convincing standard of proof places a higher burden on the government than the mere preponderance-of-the-evidence standard, but not so high a burden as to require the trier of fact to be convinced of the matter beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418, 431 (1979). In other words, allegations of fraud must be established as to clearly convince the trier of fact that the fraud occurred.

The plaintiff asserts that the government seriously hindered his performance because of delivery delays and defects relating to the GFE. In essence, plaintiff avers that any delay in his performance was caused by the government, and as such, plaintiff's delays are excusable, pursuant to FAR § 52.249-10(b)(1), (c). The burden of proof with respect to excusable delay is borne by the plaintiff. *Morganti Nat'l, Inc. v. United States*, 49 Fed. Cl. 110, 132 (2001), *aff'd* 36 Fed. Appx. 452 (Fed. Cir. 2002). Further, plaintiff must establish his affirmative defense of excusable delay by a preponderance of the evidence. *Id.* Thus, if we find, by a preponderance of the evidence, that plaintiff failed to make adequate prog-

ress under the contract, or failed to comply with the contract's submittal requirements, we shall then determine whether that deficient performance was the result of government delay. If the preponderance of the evidence supports the conclusion that the deficiencies are the result of excusable delay, the termination for default shall be converted to a termination for convenience. On the other hand, if we determine that default termination is justified based upon contractor fraud, or a material breach of the contract, or any ground that was unaffected by delay, evidence of government delay—no matter how convincing—becomes entirely irrelevant.

With these standards defined, we turn to the grounds asserted by the defendant in support of the default termination.

2. Defendant's Bases for Default Termination

In its Post-Trial brief, the government averred five separate grounds in support of its termination for default: (i) contractor's fraud, (ii) staffing deficiencies, (iii) failure to comply with the submittal requirements, (iv) substandard workmanship, and (v) violations of the Davis-Bacon Act. The government argues that each of these five bases, viewed separately, provide an adequate justification for the court to uphold the default

termination. For reasons utterly beyond the court's comprehension, the government failed to argue in its brief that the termination was justified based on plaintiff's lack of progress. The contracting officer's show cause notice[17] and notice

---

[17] The Show Cause Notice, issued on May 1, 2000, stated that Aptus "failed to cure the conditions endangering performance as described to you in [the contracting officer's][] letter dated January 14, 2000." PX 345. The January 14, 2000 Cure Notice issued to Aptus stated that "the Government considers your inability to make sufficient progress in satisfactory completion of the contract a condition that is endangering performance of the contract." PX 246. Thus, by

of termination cited lack of satisfactory progress. Similarly, Defendant's Pre-Trial Brief focused substantially on failure to make progress. At trial, the government elicited testimony relating to plaintiff's progress throughout the period of performance.

We believe that three of defendant's cited bases more accurately fall into two categories: (i) failure to make progress, and (ii) violations of contract specifications. Namely, defendant's "submittals," "workmanship," and "staffing" categories, in our view, are inextricably linked to the broader issues of overall contract progress and contract adherence. For example, we observe two separate and distinct issues with respect to Aptus' submittal requirements. Evidence in the record relating to Aptus' proceeding with work without first obtaining government approval via the submittal process is probative of Aptus' alleged violations of the contract requirements. To the extent that performing certain portions of work, without adequate approvals, resulted in unacceptable work that was rejected, this evidence is relevant to Aptus' lack of satisfactory progress under the contract as well. Likewise, evidence purporting to show that Aptus' design and installation plan submittals were delinquent and/or absent is probative of failure to make progress. As design work represents $220,200.00[18] of the contract value, design submittals themselves indicate progress. Conversely, evidence indicating an absence of design submittals indicates a failure to make progress with respect to that contract item. Additionally, installation submittals must be approved prior to commencing specific installation portions of the contract. Thus, to the extent that the evidence establishes that installation

---

incorporation, the Show Cause Notice cited failure to make sufficient progress.

[18] Contract line item 0003, in the amount of $220,200.00, represents "Engineering Design and Support."

submittals were delinquent, said evidence is probative of plaintiff's ability to proceed with the installation portions of the contract – a clear obstacle to progress. Consequently, we find that submittal evidence and workmanship issues are inextricably linked. Further, such evidence shall be evaluated as it relates to "failure to make satisfactory progress," and "violations of contract specifications."

Page -13-

Similarly, evidence purporting to show that Aptus' staffing was inadequate is also properly analyzed in light of the two aforementioned categories. Evidence of inadequate staffing may be posited to show that Aptus had not made, and was unable to make, progress under the contract. Likewise, to the extent that the evidence shows that Aptus did not have staff with the experience mandated by the contract with respect to specific areas or tasks, said evidence is probative of contract violations. Also, insofar as those "unqualified" staff members may have actually performed tasks that they were not competent to perform, pursuant to the contract requirements, said evidence is probative of violations of contract requirements. And, to the degree that this practice required portions of the work to be removed and redone, that evidence is relevant to lack of progress.

In accordance with the foregoing grounds for default, we shall address the following areas seriatim: (i) fraud, (ii) lack of satisfactory progress, (iii) violations of contract requirements, and (iv) Davis-Bacon Act violations. Furthermore, plaintiff's affirmative defense of excusable delay, which may militate against the default termination, shall be explored within the context of progress.

a. Allegations of Contractor Fraud

"[P]roof of fraud by clear and convincing evidence is a ground for default termination." *Daff*, 31 Fed. Cl. at 688 (citing *Morton*, 757 F.2d at 1278-79). Fraud will support a default termination, even when the fraud is not discovered until after the termination, and is offered as a *post-hoc* justification for the termination. *Morton*, 757 F.2d at 1277. Further,

even if the fraud at issue only affected a small portion of the work performed under the contract, the fraud may taint the whole contract, justifying default termination of the contract in its entirety. *Id.*; *Daff*, 31 Fed. Cl. at 688.

At bar, the defendant alleges contractor fraud with respect to two issues. First, defendant claims that plaintiff's proposal of Mr. Lin as a Mechanical Engineer on his "Contractor's Quality Control Plan," (PX 80) submitted for government approval on August 19, 1999, constitutes fraud. Second, the government argues that plaintiff made fraudulent representations to the government regarding his hiring and subcontracting plans during the pre-award survey. We address each of these contentions in turn.

i. Contractor's quality control plan

On August 19, 1999, Mr. Lin submitted his "Contractor's Quality Control Plan" (CQC) to the government for approval. Therein, Aptus listed Mr. Lin as the party responsible for the quality control of the mechanical portions of the contract. *Id.*

Page -14-

Specifically, the CQC states:

> (6) Mechanical Engineer: S. Emanuel Lin
>
> The Mechanical Engineer will work on mechanical design and installation of electrical apparatus, such as the installability of the speed disc for governor, the selection of enclosure for Unit 10 switchboard, the layout of electrical apparatus on its front panel, the routing of electrical conduit, partial disassembly of generator for new excitation system, etc.

PX 80.

The government contends, correctly, that Section 01451, para. 3.4.3 of the contract requires that the contractor fill this position—referenced in the contract as "Mechanical Area"—with either a Graduate Mechanical Engineer with two (2) years of experience, or a person possessing at least five (5) years of related experience. Mr. Lin, admittedly, is not a Graduate Mechanical Engineer. Moreover, he testified that he

has "rarely work[ed] with generator. [He][] did not have hands-on experience on (sic) power generation." Tr. 130. In the government's view, this statement reveals that Mr. Lin's qualifications relating to the "Mechanical Area" are wholly inconsistent with the contract requirements. Thus, the government contends that Mr. Lin's designation of himself as "Mechanical Engineer" on his CQC provides clear and convincing evidence of fraud, because Mr. Lin knew he was neither a Mechanical Engineer, nor otherwise qualified as described in the contract specifications. Accordingly, the government argues that any assertion to the contrary by Mr. Lin was fraudulent. The government cites *Christopher Village, L.P. v. United States*, 360 F.3d 1319 (Fed. Cir. 2004), for the proposition that any degree of fraud is material as a matter of law. Further, the government asserts that *Morton*, 757 F.2d at 1278-79, requires us to uphold the default termination based on said fraud, even though the termination did not cite fraud as a basis therefor. While we do not challenge the government's readings of the respective cases, we do not concur with their application to the facts in this case.

First, assuming *arguendo* that this court finds, by clear and convincing evidence, both that plaintiff committed fraud when he submitted his CQC, and that said fraud was a material breach of the contract, we do not concur that *Morton* applies to the facts at hand.

In *Morton*, the contractor was terminated for default based on performance of a contract with the U. S. Department of Agriculture (USDA) to construct certain buildings at the Plum Island Animal Disease Center located on Plum Island, New York. *Morton*, 757 F.2d 1273. After its termination, the corporate plaintiff, along with its sole shareholder and an employee, was convicted of conspiracy to make false statements, conspiracy to defraud the United States, and for making false statements. *Id.* All

convictions arose out of fraud committed in connection with plaintiff's contract with the USDA. *Id.* The various fraud convictions were upheld on appeal. *Id.*

Subsequent to its fraud convictions, plaintiff filed a claim against the government, alleging that its USDA contract was improperly terminated for default based on the grounds cited in the termination decision. The government filed counterclaims, and moved for summary judgment on the wrongful termination claim, relying solely on contractor fraud. The Federal Circuit affirmed the trial court's entry of summary judgment on plaintiff's wrongful termination claim, and held that "if the fraud committed by Morton during performance would support the Government's termination for default if discovered before termination of the contract, evidence of such fraud discovered thereafter would also support a default termination." *Morton*, 757 F.2d at 1277.

Here, the government cannot argue that it was unaware of the alleged fraud at the time of the default termination. Indeed, the "fraudulent" CQC was rejected on August 19, 1999 by the government reviewer on the precise grounds that Mr. Lin did not possess the requisite experience in conformance with the requirements set forth in section 01451, para. 3.4.3 of the contract. The government required Aptus to revise and resubmit his CQC because it knew that Mr. Lin was not a mechanical engineer and did not, in the government's assessment, otherwise possess the requisite experience required by the contract. Thus, there can be no contention by the government that it was unaware of the "fraud" until after the default termination.

In our view, *Morton* and its progeny may permit a default termination to be upheld when the fraud was known at the time of the termination, but not cited as a factor in the termination decision. We contend, however, that under the facts at bar, justifying the termination based on this principle would be unconscionable. This is so because, as we noted above, the government irrefutably knew about the alleged "fraud" on or about August 19, 1999. Nonetheless, on November 24, 1999—three months after the "fraud" was discovered—the government modified the contract to extend the performance period by 150 days. Further, the termination was not effected until June 26, 2000, some ten months after the allegedly

fraudulent statement was made and detected. Because the government, with full knowledge of the alleged fraud, both entered into the contract modification, and also allowed (or, more accurately, required) Aptus to continue performance under the contract for ten months, we hold that the government waived its

Page -16-

right to assert fraud as its basis for termination at this posture .[19] Any holding to the contrary would represent a blatant violation of the principles of fundamental fairness.

ii. Representations concerning the hiring of employees and consultants

Defendant's second allegation of contractor fraud centers on representations made by Mr. Lin, both verbal and written, regarding his intentions to hire experienced personnel and consultants to assist Aptus with the performance of the instant contract. The written statements contained in the record were all made during the pre-award survey. For instance, Mr. Lin sent a letter to the contracting staff on October 2, 1998. In said letter, Mr Lin stated that he "plan[ned] to hire Mr. Richard York and two electrical engineer/electrician (sic)..."; he attached a letter of intent to hire Mr. York to this letter.

---

[19] Waiver operates to deprive the government of its right to terminate for default when the government fails to terminate a contractor within a reasonable time after the circumstances that form the basis for termination arise, and the contractor relies to its detriment on the forbearance by continuing with performance. *DeVito v. Unites States*, 188 Ct. Cl. 979, 991 (1969) (discussing government's inability to terminate a contractor for failure to deliver by due date because it waited too long to do so). Stated differently, "waiver or election is binding, not because of consideration, but on principles of fair dealing or estoppel." JOHN CIBINIC, JR. & RALPH C. NASH, JR., ADMINISTRATION OF GOVERNMENT CONTRACTS 963 (3d ed. 1995).

PX 213. Mr. Lin admitted that Mr. York declined his offer to work at the Soo on October 12, 1998, although Mr. York indicated that he would again consider it in the event Mr. Lin was unable to secure other personnel.[20] Aptus failed to inform the government regarding that turn of events. Further, the October 2, 1998 letter stated that he had received a quote from Kiser-Johnson & Co. for "digital excitation and governor portions of the bid." *Id.* Kiser-Johnson had visited the Soo and prepared a bid for another contractor. Mr. Lin stated that he requested said bid, and that it was "within my estimate." *Id.* The government's own records indicate that he did, in fact, attempt to subcontract with Kiser-Johnson, but they were unwilling to accept his proposal whereby they would supply him with a single supervisor to oversee an Aptus-hired crew. Finally, the letter dated October 2, 1998, states that "Duke Energy in Charlotte, NC has in depth experience in hydro generator rewinding and excitor (sic) repair and is able to serve as consultant/specialist." Mr. Lin stated at trial that he had heard of Duke Energy only to the extent that he knew it was a large company with experience related to the contract; he acknowledged that, at the time he sent the letter, he had not spoken with a representative from Duke Energy, nor had he attempted to do so. Also, Mr. Lin stated, both in the

October 2, 1998 letter itself and during his testimony, that he made these various representations to assure the government that he would be able to hire a good mix of people to work on the contract, because he knew that the government had concerns regarding his capabilities.

Additional oral representations were made both before and after the contract was awarded. The government does not contend that Mr. Lin made any such representations after

---

[20] The record is devoid of any evidence tending to indicate that Mr. Lin ever renewed his attempt to hire Mr. York.

January 14, 1999, when he brought two qualified workers to a meeting with government personnel and personnel from the GFE supply contractors. At that meeting, Mr. Lin introduced the workers, and represented that they would be lending their expertise to the project. Mr. Lin admits that neither worker performed any work under the contract beyond attending the meeting. We have no doubt that Mr. Lin made each and every statement presented above. Additionally, we are convinced that he made these representations in order to allay the government's concerns regarding his capabilities. Whether Mr. Lin's representations were indeed fraudulent, however, we need not address.[21] This is so because, here again, we find that the facts and circumstances in the record clearly establish that the government knew that Mr. Lin had not hired workers or consultants to assist on the project well in advance of the default termination. First, we note that the CQC, discussed above, clearly indicated that Aptus was still a one-man operation as of August 19, 1999, because it listed Mr. Lin for *every single one* of the many positions defined in the CQC. Also, other documentary evidence establishes that the government knew that Aptus had yet to hire his "crew" as early as March 17, 1999. In fact, lack of staff was a complaint that the government cited frequently throughout the contract performance. For instance, on December 7, 1999, the government sent a letter to Mr. Lin that centered on its concerns that he did "not have the staffing in place...." PX 242. Further, lack of staff was an enumerated concern cited by the government in its January 14, 2000 cure notice. Mr. Lin responded by listing the staff he had hired to date, and noting the dates upon which they were hired. The government elected to forebear default at that time, but indicated when it communicated the forbearance to Mr. Lin that "[i]t is critical

---

[21] We note, however, that the government stipulated at trial that Mr. Lin made substantial efforts to hire personnel. This is probative of his actual intent when he made statements regarding said intent to hire.

that you have an organization, which includes the correct mix of workers to successfully complete the contract." PX 252.

We find that the government is free to argue that Mr. Lin failed to adequately staff the project, resulting in his inability to make sufficient progress and/or breaching specific staffing requirements contained in the contract. As set forth above, however, we further

Page -18-

find that the government became aware of the true extent of Mr. Lin's staffing no later than December 7, 1999,[22] yet it continued to require performance under the contract for a minimum of seven additional months. Consequently, we hold that the government cannot justify its termination for default on the basis of these allegedly fraudulent statements made on or before January 14, 1999. As indicated in subsection (i) above, we reach this holding based on the theory of waiver, as explained in detail, *supra*.

b. Lack of Satisfactory Progress

In order to uphold a default termination for failure to make progress, the government must establish, by a preponderance of the evidence, that it had a "reasonable belief . . . that there was 'no reasonable likelihood that the [contractor][] could perform the entire contract effort within the time remaining for contract performance.'"[23] *Lisbon*, 828 F.2d at 765 (internal citations omitted). This analysis does "not turn on the contracting officer's subjective beliefs, but rather re-

---

[22] As we indicated, we find that it is likely that the government knew of the staffing situation as early as March 17, 1999, a mere four months into the contract performance period, and eight months prior to the bilateral contract modification that extended the performance period by 150 days.

[23] Subsection (i) of this section discusses the contract completion date and the portion of the work due by that date.

quires an objective inquiry." *McDonnell Douglas Corp. v. United States*, 323 F.3d 1006, 1016 (Fed. Cir. 2003) (citing *Lisbon*, 828 F.2d at 767). Said analysis requires the evaluation of relevant factors, including: (i) "a comparison of the percentage of work completed and the amount of time remaining under the contract," *McDonnell Douglas*, 323 F.3d at 1017 (internal citations omitted), (ii) "problems with subcontractors and suppliers," *Id.*, (iii) "the contractor's failure to meet its own representations concerning the progress of the work," *Morganti National, Inc. v. United States*, 49 Fed. Cl. at 130 (internal citations omitted), and (iv) "over-all evidence of [the contractor's][] failure to prosecute diligently its work under the contract." *McDonnell Douglas*, 323 F.3d at 1017 (internal citations omitted). In sum, we shall consider each of the above factors, and then assess the totality of circumstances, thereby ascertaining whether the contracting officer was "justifiably insecure about the contract's timely completion" from an objective standpoint. *Discount Co. v. United States*, 554 F.2d 435, 441 (Ct. Cl. 1977).

i. Percentage of work to be completed in the remaining performance period

At the outset, we note that this factor requires us to analyze the amount of satisfactory work completed during the eighteen and one-half (18-1/2) months of

Page -19-

performance between the acknowledgment of the Notice to Proceed on December 9, 1998, and the Notice of Termination issued on June 26, 2000. We do not include in this analysis any evidence of Aptus' unsuccessful efforts to complete the work. This is so because, no matter how hard Mr. Lin may have tried to complete the work, if his efforts were ultimately in vain, the effort expended is irrelevant. Moreover, rejected work is not 'completed' work, and thus becomes part of the work yet to be completed under this analysis.

Mr. Lin contends that the July 31, 2000 contract completion date is unenforceable. This, he argues, is attributable to various governmental delays, and the non-delivery of the SCADA equipment. While we explore the issue of govern-

ment delay *infra*, we must briefly address it here so that we have a yardstick by which to measure performance and failure to perform. First, any delays caused by the government that occurred *prior to* November 24, 1999, are wholly irrelevant as to any issue currently before this court (including excusable delay). This is so because Mr. Lin asked for, and ultimately received, a 150-day performance extension as compensation for delivery delays he experienced with respect to the governor and excitation GFE.[24] Further, it is clear that all of the governor and excitation components had been delivered to the government, and subsequently transported to their respective power houses to await installation, prior to the contract modification.[25] Thus, as of the execution date of the contract modification (November 24, 1999), Mr. Lin and the government agreed that the substantial completion date for the work under the contract was extended to July 31, 2000,

---

[24] The November 24, 1999 contract modification states:

> It has been determined in view of the necessity to compensate for late availability of Government furnished governor and excitation equipment, it is in the best interest of the Government to extend the performance period of this contract....It is...understood and agreed that this time extension constitutes payment in full...for all delays directly or indirectly attributable to this modification and for performance of the work within the time stated.

PX 212(1A) at Tab P0008.

[25] Mr. Lin contends that, even after delivery of the governor and exciter equipment, he was delayed due to problems with said equipment, namely, missing and/or defective parts. The issue of delays relating to the governor and excitation equipment installation, allegedly occurring after November 24, 1999, are properly more appropriately addressed as part of our "excusable delay" inquiry, *infra*.

from March 3, 2000.

Plaintiff argues, however, that because the delivery date of the SCADA equipment was unknown as of the date of the November 24, 1999 contract modification, the entire modification is worthless. We cannot agree with that assertion. The plain terms of the

Page -20-

modification state that the extension of the performance period was granted to compensate Aptus for late delivery of the governor and excitation equipment. Establishing a separate delivery date for the SCADA portion of the contract was discussed among the contracting staff both before and after the modification. That suggested change did not come to fruition, although perhaps our current task would be easier if it had. Nonetheless, we reject Mr. Lin's argument that the then-unknown SCADA delivery date rendered the July 31, 2000 substantial delivery date without any legal force. Rather, we find that the July 31, 2000 substantial completion date was binding on Mr. Lin with respect to all of the work under the contract, *EXCEPTING* installation of the SCADA system. This is so because Mr. Lin agreed to the modification *in toto*, knowing that SCADA delivery could not be predicted. Nonetheless, he failed to negotiate to exclude any portion of the work under the contract due to the unpredictability of the SCADA delivery, although he could have so negotiated. Thus, he cannot now rely on its non-delivery to escape an agreement that he willingly entered. He could not, obviously, have been expected to install equipment that never arrived. Consequently, our evaluation of the percentage of work completed in relation to the time remaining for performance shall not include the SCADA work as "incomplete"; we shall leave that portion of the required work (contract line item 0010) out of our total evaluation. Thus, we shall analyze the proportion of the non-SCADA work that was incomplete as of the June 26, 2000 termination as compared to the proportion of time under the contract that then remained, based on the July 31, 2000 completion date.

The bulk of the evidence regarding the proportion of the total work completed at the time of the default termination was presented by Mr. Lin himself. [26] For example, Aptus was required to design, manufacture, and install a new Neutral Grounding System. It appears to the court that this system is composed of two interrelated subsystems: a neutral grounding protective relaying scheme ("scheme") and a neutral ground resistor system.[27] The manufacture and installation of the two components together constitute

Page -21-

$342,360.00[28] of the overall contract cost (*i.e.*, $1,225,110.00) - which represents approximately 28% of the total contract value.[29]

---

[26] As the court noted previously, Mr. Lin failed to do himself any favors when he elected to proceed *pro se*. In fact, it is fair to say the bulk of the evidence supporting the government's position came out during Mr. Lin's case-in-chief—much of it from his own direct examination of himself.

[27] The neutral ground resistor system was also referred to as the "ground fault resistor system" at trial. For the sake of clarity and continuity, we shall use the "neutral ground resistor system" nomenclature, unless we are quoting testimony.

[28] The Neutral Grounding System is contract line item 0011, which encompasses the manufacture and installation of the system only. The engineering design incidental to the system is properly part of contract line item 0003, entitled "Engineering Design and Support."

[29] As noted, *supra*, the design of the Neutral Grounding System is not included in this cost. A portion of the separate "Engineering Design and Support" line item (0003 – $220,200.00) is allocable to the design of the Neutral Grounding System. See footnote 34, *infra*.

The contract expressly required that the scheme "be designed by a Registered Professional Engineer with a minimum 5 Years experience in the application of protective relaying for electrical equipment and generators." PX 212(1) at 243. Mr. Lin testified that he did not hire the required engineer to design the scheme until "soon before I wrote the subcontracting plan in June 2000." Tr. 551. In fact, Mr. Lin fixes said date at June 16, 2000 in his June 20, 2000 "Subcontracting Plan"—a mere ten (10) days prior to the issuance of the Notice of Default, and more than one month after Mr. Fedynski issued the Show Cause Notice. Moreover, the record reflects that Mr. Lin was specifically informed, on March 29, 1999, that he should focus his effort on, among other tasks, the design and installation of the ground fault system, because said system is separate and "apart from those associated with installing government furnished equipment." PX 231 at 1. Mr. Lin affirmed that fact during his direct examination of himself as follows:

> **Question:** While waiting for the government-furnished equipment to arrive and to be furnished with the design and as-built of government-furnished equipment, were you able to proceed with other portions of the contract?
> **Answer**: Yes.
> **Question**: What were they?
> **Answer**: The first equipment was ground fault resistor system design.

Tr. 270. Continuing, he notes that he began this portion of the contract in February 1999 and issued a purchase order to Post-Glover Resistors for the design and manufacture of the neutral ground resistor system. He visited Post-Glover during the week of May 17, 1999. During that visit, he asked Post-Glover to refer him to someone capable of designing the scheme, but the party they referred him to failed to possess the necessary qualifications.

As we previously noted, the ground fault system is comprised of two interrelated items. Despite his efforts, Mr. Lin never made a single design submittal throughout the entire

eighteen and one-half (18-1/2) (December 9, 1998 through June 26, 2000) month

performance period with respect to the scheme. Nor did he ever receive approval for design of the neutral ground resistor system.[30] Thus, it is clear to this court that Mr. Lin failed to make any significant headway with respect to the 28% of the contract work allocable to the Neutral Grounding System manufacture and installation (contract line item 0011). To the extent that Mr. Lin contends that this portion of the work was negatively impacted by the absent SCADA equipment, we disagree, based on his testimony above wherein he states that he was able to make progress on said system "[w]hile waiting for government furnished equipment." Tr. 270. Our finding is further supported by the testimony of Mr. Steven Rose, the current Chief of the Electrical Branch at the Soo, who testified at the trial that the completion contractor designed and implemented its neutral grounding system prior to SCADA equipment delivery. Tr. at 1325.

In addition to problems with the neutral grounding system, Mr. Lin admitted during his cross-examination by the government that, as of the termination date, he had completed only a small portion of the installation work required under the contract. Moreover, Mr. Lin acknowledged in his May 18, 2000 "Response to Show Cause" that he installed con-

---

[30] We also find it noteworthy to mention that Mr. Lin stated that he did not "have experience in the design of ground fault resistor system or ground fault detection scheme." Tr. 286. Yet, as of July 21, 1999, Post-Glover "had already presented two rounds of design (sic), [and] their budget for further revision had been exhausted." PX 276 at 4. At that time, he had failed to make a submittal of Post-Glover's design to the government. Instead, Mr. Lin himself redesigned Post-Glover's submission, seemingly in lieu of increasing Post-Glover's design budget.

duit(s) that did not conform to the contract requirements that conduit(s) be at least ¾", and he cut "less than 50% of electrical conduits at Unit 10" with a type of cutter *expressly prohibited* under the contract. PX 276 at 28. Mr. Lin contends that these violations are minor and do not require rework; conversely, the government disagreed and noted that they rejected said work, as is its right.[31] Thus, said work is not "progress."

The contract also allocates $57,750.00 in cost for the manufacture and installation of a new Unit 10 Switchboard (contract line item 0012). As reflected on Mr. Lin's June 19, 2000 "Revised Construction Schedule," he had not, at that time, submitted his design of said component for government review.[32] The contract provides forty-five (45) days for government review of all submittals requiring government approval. Accordingly,

even if Mr. Lin submitted an acceptable design at that precise moment in time, he had no right to expect it to be approved prior to the contract's July 31, 2000 completion date.[33] Without design approval, no manufacturing or installation

---

[31] The government raises numerous other issues relating to Aptus' workmanship. We do not wish to belabor the issue here, as it will be explored in the context of "Violations of contract requirements," *infra*.

[32] The design of the Unit 10 Switchboard is not part of contract line item 0012; it is part of line item 0003 – Engineering Design and Support. See footnote 34, *infra*.

[33] If Mr. Lin had submitted his design on June 19, 2000, the government was not required to return its review of said design until August 4, 2000 (forty-five (45) days thereafter). In actuality, the Revised Construction Schedule stated that the Unit 10 Switchboard design was scheduled for completion on July 22, 2000.

activities are permissible. Thus, we are constrained to conclude that this portion of the work under the contract, representing $57,750.00 of the total contract price of $1,225,110.00 (approximately 5%), had not been started as of the date of termination (June 26, 2000).

Perhaps most relevant to this determination of the work to be completed in the remaining performance period is plaintiff's Revised Construction Schedule, prepared on June 19, 2000—a week prior to the date of termination. This schedule reveals that the following additional items remained incomplete as of that date:

- Design submittals[34] for the: neutral grounding resistor system, neutral grounding protective relay

---

[34] All design submittals are scheduled for payment under the contract as part of contract line item ("CLIN") 0003–Engineering Design & Support, which is allocated $220,200.00. We assigned a dollar value to each specific design by prorating the $220,200.00 value of this line item thusly:

1. We formulated an "Adjusted Contract Price" ("AKP") equal to the total contract price *minus* CLIN 0003 ($220,200.00). Thus, AKP = $1,004,910 ($1,225,110 - $220,200.00).
2. We correlated each specific design to the CLIN representing the manufacture/installation of the designed component. For instance, the Unit 10 Switchboard design correlates to CLIN 0012 – Unit 10 Switchboard ($57,750.00).
3. Then, we used the dollar amount attributed to each corresponding component as our numerator, and divided said amount by our Adjusted Contract Price. This calculation results in a ratio. *E.g.*, Unit 10 Switchboard calculates as $57,750 ÷ $1,004,910 = ~.0575.
4. Finally, we multiplied each ratio by $220,200.00. The resulting product is our pro-rated cost of a specific design. *E.g.*, Unit 10 Switchboard design is valued at $12,654.42.

scheme, Unit 10 switchboard, and Unit 10 switchgear modification,

- Automation of Units 1-3, 3A, 10,[35] and
- Modification of the Unit 10 switchgear.

Page -24-

The contract assigns $433,088.33[36] of the total contract price to the above-listed items. When this amount is added to the value of the manufacture and installation of the: (i) neutral

---

[35] Here, because we cannot clearly ascertain which items of work listed on this schedule under each generating unit are part of the governor installation versus the exciter installation versus Aptus-furnished equipment installation, the word "automate" here includes all work necessary for the automation of each generating unit, except (i) SCADA installation (which is listed separately on the schedule) and (ii) other items separately noted herein (e.g., Unit 10's switchboard and switchgear modifications).

[36] This $433,088.32 amount is the sum of the following:

NEUTRAL GROUNDING SYSTEM DESIGN
per FN 34: [CLIN 0011 (342,360) ÷ AKP (1,004,910)] x $220,200 (CLIN 0003) = $75,019.33

UNIT 10 SWITCHBOARD DESIGN
per FN 34: [CLIN 0012 (57,750) ÷ AKP (1,004,910)] x 220,200= $12,654.42

UNIT 10 SWITCHGEAR DESIGN
per FN 34: [CLIN 0014 (72,400) ÷ AKP (1,004,910)] x 220,200= $15,864,58

UNITS 1-3 GOVERNOR INSTALLATION (CLIN 0007)=$65,550.00
UNITS 1-3 EXCITATION INSTALLATION (CLIN 0004)=$76,900.00
UNIT 3A GOVERNOR INSTALLATION (CLIN 0008)= $23,350.00
UNIT 3A EXCITATION INSTALLATION (CLIN 0005)= $21,300.00
UNIT 10 GOVERNOR INSTALLATION (CLIN 0009)= $28,650.00
UNIT 10 EXCITATION INSTALLATION (CLIN 0006)= $41,400.00
UNIT 10 SWITCHGEAR MODIFICATIONS (CLIN 0014)=$72,400.00.

grounding system ($342,360.00), and (ii) Unit 10 switchboard ($57,750.00), discussed *supra*, we arrive at a total of $833,198.33. Thus, we must hold that, at a minimum, work totaling $833,198.33 of the total contract price of $1,225,110.00 was incomplete as of the termination date (June 26, 2000). This aggregate work that was incomplete represents 68% of the contract work, *including* the SCADA portions of the contract.[37] In fact, much of that work had yet to be started.[38] The percentage of the time of performance that remained was approximately 5.8%, or a mere 35 work days (35 ÷ 600).[39] Furthermore, even if we assume that, prior to the November 24, 1999 contract modification extending contract performance by 150 days, Aptus was completely unable to perform *any* portion of the contract based *entirely* on government delay, a mere 35 days remained at the time of termination. Viewed in proportion to the 150-day performance window granted by the modification, the percentage of time remaining for performance still only equates to 23.33%. Thus, 68% of the total contract work remained incomplete at the time of termination yet, at best, only 23.33% (and at worst, a mere

5.8%) of the performance period remained in which to com-

---

[37] That percentage climbs to 74.3% when the total contract price is adjusted to exclude the SCADA portion of the work (line item 0010 = $103,100.00).

[38] *E.g.*, neither the manufacture and installation of the neutral grounding system ($342,360.00), nor its design ($75,019.33) had begun at the time of termination.

[39] This is based on the 35 days remaining between the June 26, 2000 termination date and the July 31, 2000 substantial completion date as a percentage of the 600 day performance period granted by the contract and its November 24, 1999 modification (35 ÷ 600).

plete the contract. Resultantly, when viewed using either measure of time remaining for performance (5.8% or 23.33%), we hold that this factor weighs heavily in favor of the government's position.

ii. Problems with subcontractors and suppliers.

Another factor relevant to the court's progress determination is the extent to which the contractor experienced difficulties with subcontractors and suppliers. Mr. Lin's formal response to the contracting officer's notice to show cause indicates significant difficulties with his subcontractors. Further, it appears that Mr. Lin believes that he should not be held responsible for the delinquent performance of his subcontractors. For instance, he states: "[d]esign and submittal should have been Post-Glover's job. Since they refused to provide further revision on Units 3A and 10, I became their unpaid designer. They are the sole source." PX 276 at 4. Comments like the foregoing indicate that Mr. Lin believes that subcontractor difficulties that "forced"[40] him to take over "their" work should not be chargeable against him. The work in question, no doubt, remained Aptus' responsibility at all times. Thus, while Mr. Lin appears to assert subcontractor difficulties in *defense* of his lack of progress, in truth, those difficulties weigh directly and fully against him.

In addition to the problems Mr. Lin had with Post-Glover (his source for the design and manufacture of the neutral ground resistor system), he cites problems with RSE-Sierra (his initial source for the design and manufacture of the Unit 10 switchgear):

> RSE-Sierra's design arrived....I questioned [their][] construction...[fearing it] may not survive the freight from California to Soo, MI. The narrow belts would

---

[40] In truth, Post-Glover asserted merely that they had exhausted their budget for design revisions; they did not state an absolute refusal to continue revisions.

> cut into open-wound CT winding on every road bump like shaking the brain in the baby's head.
>
> RSE-Sierra requested and received the cancellation of the purchase order simply because they said they had enough of this kind of questions (sic).

Id. at 8. Consequently, Mr. Lin had to find another subcontractor. In this connection, he turned to Power-In-Control as his source for the switchgear. He notes that Power-In-Control promised him drawings in 1-2 weeks, yet Mr. Lin notes that said drawings did not arrive for seven (7) weeks. Ultimately, and for reasons unknown to the court, Mr. Lin assumed the job of revising Power-In-Control's original designs.

Page -26-

In addition to these three subcontractors, Mr. Lin experienced difficulty recruiting a Registered Professional Engineer to whom he could subcontract the design work required for the neutral grounding protective relay scheme. He failed to secure a subcontractor for that task until June 16, 2000. Moreover, while the contract required a mechanical engineer to oversee the mechanical portions of the contract, Mr. Lin never successfully hired a mechanical engineer. He did state, in his "initial" handwritten reply to the January 14, 2000 cure notice, dated January 31, 2000, that he hired Gary Horner - a mechanical engineer-but Mr. Horner quit before he started.[41]

Taken together, we find ample evidence in the record to hold that Mr. Lin encountered significant problems with his subcontractors. Further, these difficulties had not been resolved prior to the default termination. Thus, we find that said difficulties provide support for the contracting officer's justifiable concern regarding Aptus' ability to complete his contractual obligations in a relatively timely manner.

iii. Contractor's failure to meet his own repre-

---

[41] Aptus' inability or unwillingness to maintain appropriate staffing levels is explored in subsection iv, *infra*.

sentations concerning the progress of the work

Evidence of Aptus' inability to make progress in accordance with his own representations is an important factor in our evaluation of his failure to make progress. The record is replete with Aptus' statements indicating that specific tasks would be accomplished by certain dates. However, so that we do not belabor this issue by presenting redundant evidence, we shall focus our discussion solely on Aptus' Construction Schedules. We find said schedules are the most probative of this issue, as they are in writing, and bear the signature of Mr. Lin as the sole proprietor of Aptus. Moreover, they reflect representations made directly by Aptus (Mr. Lin), without any distortion of Aptus' assertions.

Over the course of his performance, Aptus submitted six (6) separate construction schedules for approval. Only three (3) such schedules were submitted for government review subsequent to the November 24, 1999 no-cost contract extension. Thus, these schedules reflect representations made by Aptus after the governor and excitation equipment arrived and had been delivered to the appropriate power houses. Below, we

Page -27-

list the delivery dates indicated for particular items across all three construction schedule revisions.

	Transmittal 1.4	Transmittal 1.5	Transmittal 1.6
Dated:	12/04/99	02/07/00	06/19/00
Design for Neutral Grounding Resist.	12/11/99	03/04/00	07/15/00
Ground Fault Detect. Scheme	02/19/00	03/11/00	08/19/00
Unit 10 Installation[42]	08/22/00	08/05/00	02/24/01

---

[42] Here again, the court is unwilling to attempt to parse out which activities are part of thegovernor installation versus the excitation installation versus the contractor-supplied equipment installation. Thus, this date for "installation" at

Unit 1 Installation	06/24/00	06/24/00	01/13/01
Unit 2 Installation	08/01/00	07/01/00	01/27/01
Unit 3 Installation	07/15/00	07/15/00	02/10/01
Unit 3A Installation	06/17/00	06/17/00	12/23/00

Each date above is a specific representation, made by Aptus, concerning his anticipated progress. Together, this table encompasses more than six months' worth of Aptus' scheduling representations with respect to almost all of the work under the contract. During that period, Aptus was unable to meet even a single scheduling deadline that he placed upon himself, as shown by the fact that Mr. Lin changed all but one date listed on Transmittal 1.4 by the time he submitted Transmittal 1.5 (submitted two months later). And, each and every completion date that Mr. Lin proposed on Transmittal 1.6 represented a change from Transmittal 1.5. Such extensive inability to conform to his own schedule is a clear indication that Aptus' work under the contract was simply failing to progress at the rate Mr. Lin himself believed it should. Our analysis of this factor provides significant support for the Contracting Officer's justifiable insecurity regarding Aptus' timely completion of the work.

iv. Aptus' failure to diligently prosecute the work under the contract

Evaluation of a contractor's diligent prosecution of the contract provides us an opportunity to address other evidence probative of a failure to make progress that did not heretofore come under discussion, *supra*. Before we analyze whether Aptus failed to diligently prosecute the work under the contract, we are compelled to note that our discussion of this factor is not an assessment of the personal effort Mr. Lin set forth. If that was our ultimate goal, the court would simply state that the record evidence

---

each power house is the date that all tasks listed for each specific generating unit are scheduled for completion.

establishes that Mr. Lin worked very hard on the contract. There is no allegation that he did not try his very best, nor that he did not expend tremendous personal effort.

This factor instead requires that we look at the results of the contractor's efforts, not simply the sweat he expended. Part of our analysis must center on the government's allegations that Aptus failed to adequately staff the project with workers possessing the correct mix of skills required for satisfactory progress. In this regard, the evidence in the record establishes that Mr. Lin did not have a single person working with him on site from the date he acknowledged the notice to proceed (December 9, 1998) until early January, 2000.[43] During the interceding period, Mr. Lin attempted to fulfil all of the contract requirements by himself, with the exception of the three subcontractors he hired to design and manufacture the Unit 10 switchgear (RSE-Sierra, Power-In-Control) and the neutral grounding resistor system (Post-Glover). And, even in those cases, Mr. Lin asserts that he personally took over the design work. He did so even though, as he testified, he knew little about designing either component.

Because Mr. Lin assumed responsibility for nearly all of the work under the contract, it is not surprising that he had difficulty making adequate progress. Moreover, it is completely understandable why he had substantial difficulty just keeping up with his required submittals under the contract. Unfortunately, understandable does not equal excusable. The

---

[43] Mr. Lin's testimony at trial established that he made repeated efforts to hire personnel, but was unsuccessful. *See, e.g.*, Tr. at 188-197. Further supporting the conclusion that Mr. Lin's hiring efforts were unsuccessful are his various CQC Plans, which reflect no employees other than Mr. Lin himself. PX 35, 80, 324. At trial, the court asked Mr. Lin how many workers he had in 1998 and 1999, to which he admitted he had none, other than himself. Tr. at 1404-1405.

contract required forty-six (46) separate types of submittals. Thirty-six (36) of those submittals require government approval. While the government is entitled to forty-five (45) days to review each submittal that requires its approval, here, the government provided an average response time of approximately 26 days.[44] Between December 9, 1998 and February 2, 2000, Mr. Lin had received unrestricted approval of a mere five (5) required submittals. The expedited turnaround of his submittal reviews does not appear to have helped Mr. Lin's progress with respect to submittal work.

As for the competency of his staff, Mr. Lin made numerous attempts to hire qualified technical workers. When faced with the impending default termination, he agreed to get subcontracting/staffing commitments, in writing. He failed, however, to do so; instead, his subcontracting plan set forth only companies that "could" consult on the project "as needed." The notable exception was his June 16, 2000 hire of Donn Rosen, a

Page -29-

Professional Engineer that Mr. Lin asserted met the contract's experience requirements for the neutral grounding protective relaying scheme. After his default termination, Mr. Lin sent a letter to Mr. Fedynski in an effort to convince him to reconsider the termination. In his letter, Mr. Lin "transcribed" a series of conversations that he had with David Wong (Contracting Officer's Representative). The exchanges he recounted, as shown below, are particularly instructive:

> *June 14, 2000 conversation between Messrs. Lin and Wong*
> **Lin**: I called Roy Electric in the Soo. I talked to Mr. Rick Roy. When GE was re-winding the generator, their people installed the conduit and control cables.

---

[44] Average response time cited is based on the response times for submittals reviewed prior to February 2, 2000.

> They wanted $60 an hour.
> **Wong**: You know that George wanted a written commitment as said in his email.
> **Lin**: I know.
> *June 19, 2000 conversation between Messrs. Lin and Wong*:
> **Wong**: I wrote in my conversation record for the last phone call that [you] would hire Roy Electric.
> **Lin**: Well, they wanted $60 an hour where I could hire someone at the Davis-Bacon rate around $25 or $28 (an hour).
> **Wong**: You know you need to have a written commitment for your resources
> **Lin**: Facing a termination, I would certainly do anything to save my skin...

PX 338.

Mr. Lin, by his own account, "would certainly do anything to save [his][] skin,", except, we note, pay qualified workers a penny more than he was legally obligated to pay. *Id.* His failure to secure a written commitment for subcontracting, as he was instructed to do as an express condition to prevent termination, was the final straw for Mr. Fedynski. Rather than provide a subcontracting plan with written commitments from qualified workers and/or companies, he opted to provide the number of electricians listed in the local yellow pages, and stated that he talked to companies that he claimed would be willing to work with him if called upon. In light of Mr. Fedynski's experiences with Mr. Lin regarding his pre-award representations regarding his intent to hire qualified staff, the court is not surprised that Mr. Lin's purported subcontracting plan failed to allay Mr. Fedynski's concerns.

Failure to hire staff also led to quality problems. While we further address issues of workmanship in the next section, we note here that Mr. Lin not only did all of the work for at least thirteen (13) of the eighteen and one-half (18-1/2) months of performance, but he also was his own Quality Control Manager, Mechanical Specialist for Quality Control,

Electrical Specialist for Quality Control, Submittal Clerk Specialist for Quality Control, et cetera.[45] It is no wonder, then, that the government observed significant problems with the overall quality of his workmanship.[46] Attempting to complete designs, installation plans, construction, and submittal requirements, all while accepting full responsibility for monitoring quality control, is simply more work than one person can do well. No matter how much effort one expends, or how fervently he devotes himself to his work, there are limits to what one man can achieve when faced with a $1,225,110.00 contract to automate five generating units.

In substance, we find, on this record, that plaintiff failed to diligently prosecute the work under the contract, though not for lack of dedication. Rather, we find that Mr. Lin's attempt to do almost everything by himself (or with a bare minimum of staffing assistance) prevented him from timely prosecuting the work.

Because we also found, *supra*, that (i) approximately 68%

---

[45] Both PX 35 and 80 (CQC Plans dated January 11, 1999, and August 19, 1999, respectively) name Mr. Lin as the party responsible for each of the listed job titles.

[46] While Mr. Lin minimized the quality problems cited by the government when he authored his response, he acknowledged the factual findings with respect to several of them, *e.g.*, PX 276 (acknowledged using ½" rigid metal conduit although ¾" is "the minimum size permitted under the contract"), and admitted fault with respect to several others, *Id.* (thanking the HDC inspector for pointing out that he forgot to remove a shipping plate from a component that he had installed). The workmanship issues are developed in greater detail as part of our analysis of Violations of Contract Requirements, *infra*.

of the work remained to be completed under the contract at the termination date, and, at best, a mere 23.33% of the construction time remained, (ii) Aptus experienced significant difficulties with subcontractors, and (iii) Mr. Lin was unable to conform to the scheduling representations he made, the contracting officer was justifiably insecure with respect to Aptus' ability to timely complete the contract. Thus, we turn to the question of whether such delay is excusable based on government delays regarding the GFE.

v. Excusable delay

A contractor who is terminated for default, pursuant to FAR § 52.249-10, is entitled to a conversion of its default termination into one for the convenience of the government if the contractor can establish excusable delay. In the context of a construction contract, as here, "the contractor must demonstrate that the excusable event caused a delay to the overall completion of the contract, i.e., that the delay affected activities on the critical path." *Morganti*, 49 Fed. Cl. at 132 (citations omitted).

Page -31-

Furthermore, the contractor must establish proof of excusable delay by a preponderance of the evidence. *Id.*

The critical path is defined as work which must be done before other tasks may proceed (*e.g.*, the flooring must be completed prior to carpeting). "[I]tems of work that are given no leeway and must be performed on schedule...[*or*] *the entire project will be delayed*...are on the 'critical path.'" *Mega Constr. Co. v. United States*, 25 Cl. Ct. 735, 746 (1992) (quoting *Haney v. United States*, 676 F.2d 584, 595 (Cl. Ct. 1982)) (emphasis added). Stated differently, the delay must not simply inconvenience the contractor by requiring him to shuffle the order of the tasks to be performed; it must effectively prevent *all progress* under the contract until the delay is resolved. *Id.*

Before we begin our analysis of the relevant evidence, we note again that Mr. Lin failed to present his case in the most effective manner; he was the only witness who asserted that

government delay interfered with his ability to make progress. His testimony is, of course, somewhat tainted by its self-serving nature. Moreover, we held, *supra*, that the representations Mr. Lin made regarding his staffing plans during the preaward stage and shortly after the award could not justify default termination, even if they were fraudulent. This holding, however, did not vitiate the allegations of fraud; rather, we determined that the government had waived its right to allege fraud with respect to those statements at this posture. In short, we did not decide the ultimate issue of fraud, because we did not need to.

Mr. Lin avers that the government caused him to suffer delayed progress. He bases this claim on his assertion that the GFE was seriously delayed, and when the governor and excitation equipment did arrive, parts were missing and/or defective. As we explained, *supra*, we limit our analysis of delay to such delay that (i) affected the non-SCADA portions of the contract, and (ii) occurred after the execution of the November 24, 1999 contract modification. To recapitulate our rationale for this limitation on evidence of delay, we find that Mr. Lin agreed to complete the work remaining under the contract by July 31, 2000. He did so despite the unavailability of a SCADA delivery date. Further, the modification expressly noted that Aptus was accepting the 150-day extension as compensation for governor and excitation delays. Additionally, we find that the contracting officer did not base any portion of his termination decision on the noncompletion of the SCADA installation. Indeed, he could not have, because the SCADA equipment had not been delivered as of the termination date. Consequently, we hold that the parties intended to establish July 31, 2000 as the substantial completion date for all non-SCADA work, Mr. Lin's current contentions to the contrary notwithstanding.[47]

---

[47] Note that we might have reached a different conclusion if we found any evidence in therecord that a SCADA delivery date had been presented to Mr. Lin prior to, or con-

Framing the issue in that light, we look only to the evidence that the governor and excitation equipment was in some manner delayed or discovered to be defective after November 24, 2000. The record reflects that Mr. Lin did find some defects in the Voith and ABB supplied equipment, which he brought to the attention of the contracting staff immediately. First, Mr. Lin notes that a pedestal for Unit 10's governor control panel was missing. In his fax to Contracting Officer's Representative James Peach, he notes that "[w]ithout it, no conduit or wiring can proceed further [at Unit 10]." PX 102. We cannot accept that this was a critical path item such as to excuse delayed progress. This is so because Mr. Lin had ample design work that was able to be completed without reference to the GFE. For example, he had yet to turn his attention to the neutral grounding protective relay scheme, and his submittal of the revised neutral grounding resistor system was disapproved the very day he discovered and reported the missing part. He resubmitted a revised neutral grounding resistor system on February 4, 2000, thus indicating that he was able to occupy his time, absent the GFE. That submittal was reviewed and returned to Mr. Lin on March 3, 2000, and a resubmittal was again required.

In addition, Mr. Lin represented to the government on February 23, 2000, that he "believes that the dates of his latest proposed schedule are still achievable." PX 127 at 1. At that time, Aptus' "Transmittal 1.5 -- Construction Schedule" was the schedule to which he referred. As reflected in the table provided in subsection III.B.1.i., *supra*, that schedule rep-

---

temporaneously with, the execution of the modification. If there was evidentiary support for that notion, we might determine that Mr. Lin relied on said SCADA delivery date when he negotiated his extension.

resented that all work (less SCADA) would be complete before the July 31, 2000 deadline. The single exception was the Unit 10 exciter, which was scheduled for completion on August 5, 2000. Mr. Lin did not prepare that schedule until February 4, 2000 – after this defect was discovered. He cannot therefore establish that defective or missing parts relating to a single generating unit interfered with the critical path, when his own statements conflict with that claim.

The next alleged problem with the GFE was discovered by Mr. Lin on February 24, 2000. There, Mr. Lin provided a laundry list of missing and defective parts relating to governor equipment. We cannot concur with Mr. Lin's bare conclusory assertions that these problems impeded critical path work either, because we find that Mr. Lin had copious work to complete before installation itself became a critical path item. Most notably, Mr. Lin's February 10, 2000 submittal register showed that Aptus had six separate submittal types currently "in design." Said register designated that these designs would be submitted by May 10, 2000. Four of those submittal types required drawings. There is no indication the GFE problems noted by Aptus on February 24, 2000 hindered

these design submittals. Further supporting this finding is a June 9, 2000 email communication circulated among members of the contracting staff entitled "Notes for Aptus Conversations," wherein the government stated that:

> Please help Aptus to understand:...
>
> [D]esigns and submittals must move quickly. This is the 'critical path'....Physical installation itself will not have critical path importance until actual outages begin....Submittals required prior to the first outage are incomplete. That means we have at least 45 days before the first outage. Wire and conduit work can't begin until the wire and conduit submittals are approved. Therefore, even some of the preliminary installation work can't begin. Until installation becomes

a critical path item, delays caused by Voith equipment have no impact on the contract schedule.

PX 173 (emphasis in original).

We find the above statement extremely persuasive, especially in light of our earlier findings regarding the percentage of work remaining under the contract at the time of termination (68%). The majority of the work under the contract was outstanding at the time of default termination, and the required installation procedure submittals had not been provided to the government as of June 2000. Since GFE installation could not begin until at least July 15, 2000 (based on the 45-day submittal review period), we cannot subscribe to the contention that Aptus' delays resulted from defects to GFE. We find that Aptus could perform ample work, even in the absence of GFE. For example, Mr. Lin could complete the numerous designs that he identified as still "in design" (or to be designed) as late as his June 19, 2000 Construction Schedule, namely designs for: the Neutral Grounding System, the Unit 10 Switchboard, and the Unit 10 Switchgear. Thus, we hold that Aptus has not established an excuse for his lack of progress. And, in accordance with our earlier findings, we hold that the contracting officer's decision to terminate Aptus for default was based on a justifiable insecurity regarding Aptus' ability to timely complete the contract.

Accordingly, we uphold the default termination, and therefore DENY plaintiff's claim of wrongful termination.

c. Violations of Contract Requirements

The government cites Aptus' violations of contract requirements as an alternative ground to uphold the default termination. Specifically, the government cites significant violations of submittal requirements, and failure to follow technical requirements,

resulting in unacceptable work. Additionally, defendant cites Aptus' violations of contract staffing requirements. Although we have already determined that the default termination was proper, we shall briefly address these issues as well.

First, we turn to the submittal requirements, which have already received a fair amount of attention in earlier sections. The evidence presented to this court reflects that Mr. Lin was required to make forty-six (46) separate enumerated submittals. The contract contains numerous lists of required submittals, along with descriptions of what each submittal is to contain. *E.g.*, PX 212(1) 187, para. 1.3; PX 212(1) 114-124, para. 3.2.2. Moreover, the contract sets numerous specific deadlines for the proffering of certain submittals. *Id.* For instance, the contract contains a Submittal Register (ENG FORM 4288) that lists each of the forty-six (46) submittals, and directs the reader to the specific paragraph in the contract that describes the submittal. PX 212(1) at 152. Said Submittal Register shall be submitted "to the Contracting Officer for approval within 10 calendar days after receipt of the Notice to Proceed." PX 212(1) at 110. The contracting staff made Mr. Lin aware of this requirement when, as of February 23, 1999, he had failed to submit his register. PX 45. The government explained to Mr. Lin that the submittal register is an important tool by which the government monitors progress. By his own account, Mr. Lin submitted his first attempt at a submittal register almost a year later, on February 10, 2000.

Administrative submittals, such as the register, employee lists, scaffolding submittals, etc., are of lesser import, in our view, than are technical submittals and product submittals. Nonetheless, they are each required by the contract that Mr. Lin entered into voluntarily. Individually, we do not find that failing to comply with isolated submittal requirements constitutes a material breach of the contract that justifies default termination. However, the evidence shows that Mr. Lin's failure to comply with submittal requirements was systemic. Further, submittals of far greater importance were never provided. For example, the government never received a completed design for the Neutral Grounding System, although the system could not be manufactured without prior design approval. That single submittal prevented Mr. Lin from performing his manufacturing and installation requirements re-

lating to the neutral grounding system. The neutral grounding system was the single largest contract line item.

In addition, Aptus failed to receive approval prior to making purchases. This practice led to Aptus making a number of unilateral changes to the specifications, which plaintiff does not deny. For instance, Mr. Lin simply decided not to comply with a known contract requirement specifying the use of ¾" rigid metal conduit. He stated that cost difference between ½" conduit and ¾" conduit is minimal (indicating that he was not disregarding the specifications out of personal financial considerations). Using ¾", "the minimum size permitted under the contract, may not result in an optimal routing and

Page -35-

achieve maximum installation prior to the generator shutdown." PX 327 at 12. The government, as is its right, refused to accept the work. Mr. Lin made another unilateral change to the contract requirements when he used a roller-type cutter on conduit, although such cutters were expressly prohibited in the contract. He acknowledged that he was aware of the requirement, but defended his use thereof stating "[i]f the roller type cutter is not suitable for the conduit, its (sic) hard to imagine why the RIGID, the world leader in the threader business, is still shipping it as a standard equipment without fear of liability damage claims." PX 276 at 30. We find that comment, and others like it, to be a completely inappropriate response. A combative tone is especially unwarranted when the government is simply requiring that the contractor do the job that he freely assumed, in accordance with the terms to which he agreed.

Other workmanship issues arose throughout the course of performance. When informed that he had committed a violation of the National Electric Code, Mr. Lin wrote:

> By no mean (sic) do I despise NEC code, but a product design is way beyond the code compliance. The lifeless code does not design a product, but an engineer's creativity, keen observation, and superior problem solving technique do. You may be able to

> throw a code book on me like a Pharisees, but I'll have a better end product after smoothing out a few rough edges.

Id. at 35.

We simply cannot fathom why Mr. Lin feels that he is justified in violating the government's specifications and the NEC. Arguing that he knows better than the government and the NEC, and attacking both the Code and the inspector who noted the problem, does not justify his inflexible position.

In addition to submittal issues and nonconforming workmanship, the government cites failure to follow the staffing requirements set forth in the contract. This is most evident with respect to the CQC plan and submittal. PX 35; PX 324. To provide some background, the contract places the burden of controlling quality on the contractor. The government's role is simply to assure itself that the contractor is, in fact, executing his CQC Plan. As discussed relevant to accusations of contractor fraud, *supra*, the contract sets specific experience requirements for persons filling the required supervisory quality control roles. For example, a mechanical specialist and an electrical specialist are expressly required. Both have to be either graduate (mechanical/electrical) engineers with two years experience, or persons with five years of related experience. Mr. Lin failed to comply with the mechanical portion of the contract, despite his assertions to the contrary. Moreover, this same section required a CQC System Manager, "who shall be a

construction person with a minimum of three years in *related work*." PX 212(1) at 117 (emphasis added). We find that the plain meaning of the phrase "related work" requires that the CQC System Manager's work experience shall be related to hydroelectric power plant construction. Mr. Lin had no prior hydroelectric power plant experience, by his own admission.

Without parading out every single alleged violation of the contract requirements, we find that (i) Mr. Lin committed numerous contract violations, (ii) he did so without regard for his obligations under the contract's express terms, and (iii)

taken in totality, these violations constitute material breach of the contract. Thus, we hold that the contracting officer's decision to terminate Mr. Lin was justified on this basis.

d. Violations of the Davis-Bacon Act

The government asserts that the termination may also be upheld based upon alleged violations of the Davis-Bacon Act. In support of this allegation, the government argues that Aptus "ignored repeated requests to comply" with the Act. PX 263. Further, the government avers that Mr. Lin intentionally manipulated the number of hours that he reported for his workers, thereby giving the false impression that they were being paid in compliance with the contract's wage determination.

Plaintiff, conversely, argues that the contract incorporated FAR § 52.222-14, which requires that labor disputes be resolved in accordance with the Department of Labor regulations set forth in 29 C.F.R. parts 5, 6, and 7 "and not the Disputes clause of this contract." FAR § 52.222-14. We concur with plaintiff's reading of the law insofar as the dispute complained of herein is premised upon violations of the Davis-Bacon Act that are not justiciable before this court. *Herman B. Taylor Constr. Co. v. Barram*, 203 F.3d 808 (2000).

In our view, however, defendant's allegation regarding the falsification of payroll documents is not a "Labor Dispute." It is a labor reporting deficiency and, if true, is a violation of the Payrolls and Basic Records Clause, FAR § 52.222-8, not just the Davis-Bacon Act. *Kelso v. Kirk Bros. Mech. Contractors, Inc.*, 16 F.3d 1173 (Fed. Cir. 1994). To clarify, on one hand, defendant raises the allegation that plaintiff violated the wage determinations by failing to pay his workers in accordance to the wages set therein (Davis-Bacon Act Violation). On the other hand, the government proffers evidence that Mr. Lin falsified payroll information to cover up his Davis-Bacon Act violations. The former must be determined by the Department of Labor; the latter is cognizable here. Thus, if there is evidence to substantiate violations

of the Payrolls clause, defendant has an independent ground upon which to justify the termination for default.

Page -37-

Upon review of the record, we find a dearth of evidence to support a charge of payroll violations. There is evidence that Mr. Peach (Contracting Officer's Representative) conducted an informal wage interview that indicated that Mr. Lin might have under-reported hours. Mr. Peach is reported as saying that he checked some of the payroll submissions against the Soo sign-in logs at the guard station, yet no such log entries were presented to the court. No payroll submissions are a part of the record before us. No such wage interviews were included for our evaluation. All we have are vague rumblings about what the contents of evidence that is not before us might have established, had it been presented. That is simply not enough for us to assign a charge involving moral turpitude to Mr. Lin's actions.

Thus, we hold that the government has failed to meet its burden of proof with respect to this issue, and therefore cannot justify the default termination on this basis.

B. Count III – Government Changes to Contract

In Count III of Plaintiff's First Amended Petition, plaintiff avers that the "Government conspired and ultimately succeeded in the misuse of *Default* clause to change the manner of contract performance." Compl. 9. A careful reading of this claim reveals that Mr. Lin believes that the government denied him the services of erecting engineers, in violation of the contract. We find no evidence of that in the record. Further, we note two pertinent facts: (i) Mr. Lin did receive a visit from Voith erecting engineers in response to his February 24, 2000 complaints of governor defects, and (ii) a contract prerequisite for receiving assistance from the erecting engineers is that Mr. Lin request said services, via Submittal Item 32, thirty (30) days in advance of his need for the erecting engineers' services. We see no evidence in the record that Mr. Lin ever made such a request. Additionally, based on our evaluation of the progress of the work at the time of the ter-

mination, assistance from erecting engineers would have been premature. As we noted, *supra*, Mr. Lin had not received approval to begin installing GFE at the time of the termination, as he had not submitted his installation plans for approval. Thus, we find no valid basis for plaintiff's claim that the government breached its obligations under the contract by withholding the services of erecting engineers.

Plaintiff's claim for changes to the contract is DENIED.

Page -38-

VI. CONCLUSION

For all of the foregoing reasons, the court rules as follows:

1. Plaintiff's claim for wrongful termination (Count I, including Counts II and V subsumed thereunder) is DENIED;

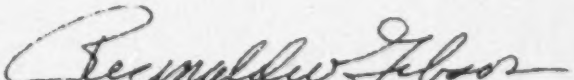
2. Plaintiff's claim for changes to the contract (Count III) is also DENIED;

3. Plaintiff's claim seeking damages for violations of suretyship law (Count IV) is DISMISSED pursuant to RCFC 12(b)(1); and

4. Finally, Defendant's Motion for Entry of Judgment pursuant to RCFC 52(c) is MOOTED by this opinion; therefore it is DENIED.

The Clerk of the Court is directed to enter judgment accordingly, dismissing plaintiff's complaint in its entirety.

IT IS SO ORDERED.



Reginald W. Gibson, Senior Judge

SECTION 00800

SPECIAL CONTRACT REQUIREMENTS

1. 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within ten (10) calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 450 after receipt of the notice to proceed. The time stated for completion shall include final cleanup of the premises.

2. 52.211-12 LIQUIDATED DAMAGES-CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of $538.00 for each day of delay.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

52.243-4 Changes. (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

(1) In the specifications (including drawings and designs); (2) In the method or manner of performance of the work; (3) In the Government-furnished facilities, equipment, materials, services, or site; or (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this

paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

(1) The date, circumstances, and source of the order; and (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

52.245-2 Government Property (Fixed-Price Contracts).

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

. . . . .

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive

remedy. The Government shall not be liable to suit for breach of contract for— (1) Any delay in delivery of Government-furnished property; (2) Delivery of Government-furnished property in a condition not suitable for its intended use; (3) A decrease in or substitution of Government-furnished property; or (4) Failure to repair or replace Government property for which the Government is responsible.

52.245-4 Government-Furnished Property (Short Form).

(a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when—

(1) The Contractor submits a timely written request for an equitable adjustment; and
(2) The facts warrant an equitable adjustment.

. . . . . .

52.249-10 Default (Fixed-Price Construction).

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

(i) Acts of God or of the public enemy, (ii) Acts of the Government in either its sovereign or contractual capacity, (iii) Acts of another Contractor in the performance of a contract with the Government, (iv) Fires, (v) Floods, (vi) Epidemics, (vii) Quarantine restrictions, (viii) Strikes, (ix) Freight embargoes, (x) Unusually severe weather, or (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.1 GENERAL INFORMATION

In each instance, the contract price for an item will constitute full compensation as herein specified, as shown, or as otherwise approved. The contract price and payment will also constitute full compensation for all work incidental to completion of the item, unless such work is otherwise specifically mentioned for separate payment under another bid item. In the event any work is required by the specification sections or by the drawings and not specifically mentioned in the measurement and payment paragraphs, separate or direct payment will not be made, and all costs thereof are incidental to, and included in, the contract prices and payment for all items listed in the bid schedule.

1.2 MEASUREMENT

1.2.1 General

Items measured as a job will be measured for payment as a complete job in the locations indicated. This measurement includes all incidental work and materials such as fittings, fasteners, electrical materials, and O&M manuals that are necessary to make a complete job. Unless the payment item paragraph makes a specific exception of any item, incidental items will not be measured under any other item even though there is another listing for the work or material.

1.22 SCHEDULING AND COORDINATION OF CONTRACTOR WORK WITH OTHER ACTIVITIES

1.22.1 Coordination

The operation of the powerhouse and project shall take precedence over required contract work, and the Contractor shall coordinate his operations with the Project Manager so as to reduce interfere with the operation of the powerhouse, project and/or the project personnel. Work activities shall be planned and scheduled so that all work, installation, wiring, auxiliary devices, operational testing, and repair of malfunctioning equipment does not cause any one of the five generators to be out of service for a total of twenty-one (21) calendar days. Out of service time includes total time that the generator is not transmitting power to the local utility. In order to meet this requirement, the plan should include as much preparation and work as possible before removing a unit from service. Only one generating unit may be taken out of service at one time for the installation work. More than one generator may be taken out of service simultaneously if necessary for final operational sequence testing of the SCADA System.

1.22.2 Liquidated Damages for Excessive Generator Out-of-Service Time

If the Contractor fails to complete the field work resulting in total unit out-of-service time exceeding that specified above, or any extension thereof, the Contractor shall pay to the Government as liquidated damages the following sums; $1400 for each day of delay for Unit 1,2 or 3, $690 for each day of delay for Unit 3A, and $150 for each day of delay for Unit 10. These liquidated damages would be in addition to those associated with Failure to complete all work within the total contract time specified as identified in SECTION 00800, CLAUSE entitled Liquidated Damages-Construction

1.22.3 Installation Plan

The Government shall authorize the starting date of all activities. Not later than 90 days prior to commencement of installation the Contractor shall submit his detailed installation plan and schedules for approval. The plan shall include time for

outages and activity schedule which demonstrates the dependency of one activity on another, what the dependency is, and how many workmen will be required to complete the installation and testing within the allotted time. The Contractor shall notify the Government one (1) working day in advance when he will shift his work from one area to another, unless otherwise specified in these specifications.

DACW35-98-B-0024 01100-11

1.3 SUBMITTALS

Submittals required by this section of the Technical Specifications shall be for Government approval (GA) or for information only (FIO), and shall be submitted as stated below in accordance with SECTION 01330. The time of submittal shall be in accordance with SECTION 01330, unless otherwise indicated below.

Plan and Schedule; GA-AOF

A detailed plan and schedule for accomplishing the work to be performed under this section within 30 calendar days after receipt of notice to proceed. The plan shall outline the Contractor coordination to be performed, the services and the facilities to be provided and the work to be done; the plan shall also outline each successive operation and method of procedure in detail including the location of proposed core drilling, timing of the work, relationship to the Contractor's schedule, and other items requested by the Contracting Officer. The Contractor shall be responsible for coordinating the installation of the Government furnished equipment to be installed in this contract. The Contractor shall notify the Government of any coordination problems as early as possible to allow the Government flexibility in coordination resolution. Where equipment if specified to conform to requirements of the ASME Boiler and Pressure Vessel Code, the design, fabrication, and installation shall conform to the code. This work will affect the Powerhouse operation and the Contracting Officer shall be notified in writing not less than 5 working days prior to start of work on each unit.

DACW35-98-B-0024 15050-2

3.1 INSTALLATION

3.1.1 General

The installation of Government furnished governor upgrade equipment for Units 1-3, governor upgrade equipment including a hydraulic power unit for Unit 3A, and a complete governor for Unit 10 including piping, valves, fittings and related accessories shall be made as shown and specified. Material and equipment installed shall be suitable for the pressures and temperatures encountered. All piping installation shall be in accordance with ASME B31.1. The descriptions of the property to be furnished by the Government, as given herein and shown on the drawings, are general in scope. Supplier's detailed assembly and foundation drawings will be made available to the Contractor for use in performing the required work after they have been approved by the Government. Equipment, wherever practicable, will have been tested in the shop for correct operation before shipping; however, the Contractor shall make such field adjustments to the equipments as may be required by the Government for satisfactory operation and integration of the equipment into the system.

3.1.2 Services of Erecting Engineers

Under a contract with the supplier of the governor equipment, the Government will provide the services of erecting engineers at no cost to the Contractor to assist the Contractor on his portion of the work, of the correct assembly procedures, testing, methods of alignment and installation of equipment. Services of these engineers will be provided at no cost to the Contractor for such reasonable time as is determined necessary by the Contracting Officer. The Contractor shall give the Government 30 calendar days advance notice of the time when the services of each erecting engineer will be needed. Any errors in work done in the absence of the erecting engineer, or work which does not conform to the instructions issued by such erecting engineer shall be corrected at no additional cost to the Government. The Contractor will not be held responsible for manufacturing errors or errors in the manufacturing errors or errors in the manufacturer's drawings.

1.3 SUBMITTALS

Submittals required by this section of the Technical Specifications shall be submitted for Government approval (GA) or for information only (FIO) and shall be submitted as stated below, and in accordance with SECTION 01330, unless otherwise indicated below.

1.3.1 Equipment Items

Submittals as described below shall be submitted for the following items as a minimum. . . . .

SD-01 Data [DACW35-98-B-0024 16050-5]

Manufacturers' Information; GA-AOF

The names of the manufacturers of all equipment intended for incorporation into the work, together with performance capacities and other relevant information pertaining to each item of equipment. Samples of materials shall be submitted for approval when so directed. Equipment, materials, and articles installed or used without such approval are subject to rejection.

Catalog Data; GA-AOF

Specific catalog data for equipment, components, or materials intended for use in the work, shall be submitted 60 days prior to the purchase of such items to indicate complete compliance with the contract specifications, and to fully describe the systems and equipment provided. All catalog data shall have marked upon it the project name and contract number, and shall identify the specific items intended for the work, with irrelevant data either obvious or marked out.

SD-04 Drawings

Shop Drawings; GA-AOF

Shop drawings shall be submitted to show complete compliance with the contract specifications, and to fully describe the systems and equipment provided. All shop drawings shall include the project name, contract number, and all catalog numbers identified on catalog cuts. The drawings shall cover equipment and systems furnished by the Contractor, and shall also cover integration of the separate items of Contractor- and Government-furnished equipment with the project, where Government or manufacturers' drawings have not done so, or

must be updated to reflect actual conditions. The following shop drawings shall be submitted:

Outline Drawings; GA-AOF

Outline drawings of all equipment to be furnished within 60 calendar days after date of notice to proceed, with weights and overall dimensions. Drawings to include the detailed dimensions of the equipment; the size and location of conduit and cable entrances; mounting details; recommended foundation details; and details of all raceway and cable terminations at enclosures. Drawings showing the equipment shipping weights and crate sizes and proposed routing at the project shall be included.

Assembly and Detail Drawings; GA-AOF

Assembly and detailed drawings and data within 120 calendar days after notice to proceed. The drawings and data shall include sectional views of all equipment items, drawings, or catalog cuts and descriptions of equipment and components, and all relays and other devices, one-line, functional, and block diagrams of the equipment systems, schematic diagrams, equipment lists, and nameplate schedules. All materials shall be identified, and component locations, device mounting dimensions, and physical details of device and conductor systems electrical connections shall be shown. Design concepts and assembly procedures, where critical, shall be described.

Connection Diagrams; GA-AOF

Complete assembly full-line connection diagrams showing point-to-point [DACW35-98-B-0024 16050-6] wiring between all device terminals, and between device terminals and terminal blocks, and between terminal blocks. The diagrams shall provide a space at least 3 inches, below and adjacent to the terminal blocks for external connections or for connections between equipment sections, in which external circuits, conduits or connections may be drawn. Device and wiring designations shall agree with those identified on the schematic diagrams, and with other data submitted. The wiring diagrams shall be made as seen by an observer of the actual wiring, and space shall be provided for the addition of devices where mounting space exists on the structure. Drawings shall

also show the proposed arrangement of terminal blocks and supports for incoming cables.

As-Built Drawings; GA-AOF

Not later than 60 calendar days after completion of the work, submit a complete set of as-built drawings showing all work up to the time that the contract is completed and the work is accepted by the Contracting Officer. As-built drawings shall include all drawings and other data submitted for approval, including catalog data, calculations, sketches, or other descriptions of the work, as well as any new drawings needed to fully describe the completed work.

SD-06 Instructions

Removal and Modifications Plans and Procedures; GA-AOF

Not later than 60 calender days prior to proposed start of work at the project, detailed plans for removal of existing items to be removed, and detailed plans for installation of new equipment shall be submitted, along with detailed plans for modifications to existing equipment which is to be modified. The procedures shall provide for safe conduct of the work, careful removal and disposition of materials, and protection of property which is to remain undisturbed. The procedure shall include detailed descriptions of the methods and equipment to be used for each operation, a step-by-step activity listing, and a schedule which takes into consideration the dependency of one activity on another. Include: the number of shifts to be worked; shift starting and stopping times; crew sizes and supervisors on each shift responsible for superintendence and safe clearance. Any activities which are hazardous, affect plant operation or require participation by Government personnel, shall be clearly described and emphasized in the plan. The Contractor will not be permitted to begin work at the project site until the removal and installation and modifications plans have been "Approved" or "Approved Except as Noted".

Installation Instructions; GA-AOF

Installation instructions shall be furnished not later than thirty (30) calendar days prior to delivery of all equipment requiring special preparation or installation procedures or precautions. When advance preparation is required, such instructions shall

be submitted not later than 30 days prior to commencement of the advance preparation.

Operation and Maintenance (O & M) Manuals; GA-AOF

Not later than thirty (30) calendar days prior to the first field test, the Contractor shall submit three (3) preliminary copies of Operation and Maintenance Manuals. Submittals shall be made in accordance with all applicable procedures for submittal of drawings, except as provided herein. The CO will return one draft copy with appropriate approval of, [DACW35-98-B-0024 16050-7] or comment on, the acceptability of the submittal. The Contractor shall resubmit the one draft copy with such corrected and/or additional data sheets, and data sheets shall be furnished also for the two draft copies retained by the CO. Upon final approval of the draft, the Contractor shall submit five additional copies for a total of eight to the Contracting Officer. The copies shall be furnished no later than the date upon which the equipment is placed into full operation.

SD-09 Reports

Factory and Field Test Reports; GA-AOF

Five certified copies of the reports of all factory and field tests, including complete test data. Reports shall be submitted for all manufacturer's standard tests and inspections, as well as all tests required by these specifications, and where permitted, for tests performed prior to award of this contract. Reports of all witnessed tests shall be signed by the witnessing representatives of the Contractor and the Contracting Officer. The test data shall include: . . . .

Test Plan and Forms; GA-AOF

No later than thirty (30) calendar days prior to the first tests, the Contractor shall submit five copies of a test procedure plan, listing the routine and operational test to be conducted. The plan shall include a copy of each blank form to be used for recording field test data. The forms shall cover as a minimum the detailed equipment operational checklists and wire and cable field tests. Testing shall not begin prior to the Contracting Officer's approval of the test plan.

SD-13 Certificates

Wire Markers Certifications; FIO

BEST AVAILABLE COPY

AWARD / CONTRACT

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) ▶	RATING	PAGE OF PAGES 1 | 3
NTRACT (Proc. Inst. Ident.) NO. DACW35-99-C-0001	3. EFFECTIVE DATE 11/02/98	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. W56MES-8174-6696

5. ISSUED BY CODE W56MES02

USA Engineer District-Detroit
Corps of Engineers
PO BOX 1027
DETROIT MI 48231-1027

Marilyn Hill S07
(313) 226-6431

6. ADMINISTERED BY (If other than Item 5) CODE EXPTY

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) Vendor ID: 00000474

APTUS COMPANY
3527 WOODVALLEY DRIVE
HOUSTON TX 770354232

8. DELIVERY
☐ FOB ORIGIN ☒ OTHER (See below)

9. DISCOUNT FOR PROMPT PAYMENT
00.000% 000 Net 014

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: ▶ ITEM 11

CODE 0FUC3 FACILITY CODE

11. SHIP TO/MARK FOR CODE H7H0T40

ELECTRICAL BRANCH
SOO AREA OFFICE
ST. MARYS FALLS CANAL
SAULT STE MARIE, MI 49783

12. PAYMENT WILL BE MADE BY CODE t0b0200

USAED, DETROIT DISTRICT
C/O USACE, FINANCE CENTER
7800 THIRD AVENUE
MILLINGTON TN 38054-5005 EFT: T

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:
☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

14. ACCOUNTING AND APPROPRIATION DATA
96NA X 3123.0000 H7 1997 08 2427 017380 96203 3200 001WXS
Award Oblig Amt US$ 26,000.00

ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	See attached Schedule(s)				

15G. TOTAL AMOUNT OF CONTRACT $ 1,265,110.00

16. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE (S)	(X)	SEC.	DESCRIPTION	PAGE (S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
X	A	SOLICITATION/CONTRACT FORM	1		I	CONTRACT CLAUSES	
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2			PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return ____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award / contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18. ☒ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number DACW35-98-B-0024 including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award / contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)	20A. NAME OF CONTRACTING OFFICER
	George Fedynsky X04 (313) 226-6356
19B. NAME OF CONTRACTOR / BY _____ (Signature of person authorized to sign)	**19C. DATE SIGNED**
20B. UNITED STATES OF AMERICA / BY George Fedynsky (Signature of Contracting Officer)	**20C. DATE SIGNED** 05 NOV 1998

NSN 7540-01-152-8069 PREVIOUS EDITION UNUSABLE 25-108 STANDARD FORM 26 (REV. 4-85)

SECTION 00010
SUPPLIES OR SERVICES AND PRICES/COSTS

Sault Ste. Marie Powerhouse Automation Installation Contract

Estimated Bid Item
The quantity for Bid Item's marked EST is estimated and may be increased or decreased at the discretion of the Government.

PR&C No. W56MES82959580
Accounting and Appropriation Data: 96 NA X 3123.0000 H7 1997 08 2427 017380 96203 3200 OOIWXS

ITEM	DESCRIPTION	QUANTITY	U/I	AMOUNT
0001	Site Mobilization to Accomplish Work	1.00	JB	36,500.00
0002	Site demobilization to remove equipment, cleanup and restore the site to original condition	1.00	JB	1,500.00
0003	Engineering Design and Support	1.00	JB	220,200.00
0004	Installation of the Excitation System for Units 1, 2 and 3	1.00	JB	76,900.00
0005	Installation of the Excitation System for Unit 3A	1.00	JB	21,300.00
0006	Installation of the Excitation System for Unit 10	1.00	JB	41,400.00
0007	Installation of Units 1,2 and 3 Governor Retrofits	1.00	JB	65,550.00
0008	Installation of Unit 3A Governor Retrofit	1.00	JB	23,350.00
0009	Installation of Unit 10 Governor	1.00	JB	28,650.00

ITEM	DESCRIPTION	QUANTITY	U/I	AMOUNT
0010	Installation of SCADA System	1.00	JB	103,100.00
0011	Neutral Grounding System	1.00	JB	342,360.00
0012	Unit 10 Switchboard	1.00	JB	57,750.00
0013	Miscellaneous Switchboard Modification	1.00	JB	99,400.00
0014	15 kV and Switchgear Modifications	1.00	JB	72,400.00
0015	Spare Parts	1.00	LT	19,750.00
0016	Skilled Craftsman Hire (Hours Est) (Optional)	1,000.00	40.00/HR	40,000.00
0017	Parts and Materials Not to Exceed $15,000.00	1.00	JB	15,000.00

Optional Bid Items

The Government may require the delivery of the line item 0016 identified in the Bid Schedule as an Optional item. The quantities for these items may be increased or decreased or the item may not be used at all, at the discretion of the Government. The unit price or amount of an optional item will remain unchanged whether the quantities are increased or decreased. The Government may exercise an option by written notice to the contractor commencing from the date of contract award through the date the contract is closed, unless otherwise specified. If an option is exercised, the contract completion date will not be extended, however, with mutual agreement, the schedule of work may be modified. Where appropriate, the above may be supplemented by FAR Clause 52.217-6 Option for Increased Quantity, Section 00800.

END OF SECTION 00010

~~AMENDMENT OF SOLICITATION~~/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
Construction	1 | 2

2. ~~AMENDMENT~~/MODIFICATION NO	3. EFFECTIVE DATE	4. ~~REQUISITION/PURCHASE REQ~~ NO.	5. PROJECT NO (If Applicable)
P00008	See Block 16C	A99-0001 001	

6. ISSUED BY — CODE J

USAED- Detroit
P O Box 1027
Detroit, Michigan 48231-1027

7. ADMINISTERED BY (If other than Item 6) — CODE

Soo Area Office
St. Marys Falls Canal
Sault Ste. Marie, Michigan 49783

8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code)

Aptus Company
3527 Woodvalley Drive
Houston, Texas 77025-4232

CODE — FACILITY CODE

9A. AMENDMENT OF SOLICITATION NO

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/~~ORDER~~ NO

✓ DACW35-99-C-0001

10B. DATED (SEE ITEM 13)
98 Nov 05

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

~~s~~ must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: ; completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitations and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
96NA X 3123.C000 H7 1997 08 2427 017380 96203 3200 001WXS
Contract Amount Unchanged. Available Funding Unchanged.

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/~~ORDERS~~, IT MODIFIES THE CONTRACT/~~ORDER~~ NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation, date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF

✓ 52.0243-0004- CHANGES

D. OTHER (Specify type of modification and authority)

IMPORTANT: Contractor ☐ is not, ☑ is required to sign this document and return original and 1 copies to the issuing office.

14. DESCRIPTION OF ~~AMENDMENT~~/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Contract for Install Power Plant Automation at Sault Ste. Marie, Michigan
P0001 Time Extension

See Page 2.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
EMANUEL LIN, President	Administrative Contracting Officer

15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
E Emanuel Lin (Signature of person authorized to sign)	24 NOV 99	BY Stanley R. Jacek (Signature of Contracting Officer)	12 NOV 99

MODIFICATION OF CONTRACT

Contract No. DACW35-99-C-0001
Modification No. P00008
Contractor : Aptus Company
Contract Title: Install Power Plant Automation
Location: Sault Ste. Marie, Michigan

14. DESCRIPTION OF MODIFICATION (CONTINUED)

A. SCOPE OF WORK

P0001 Time Extension

It has been determined that in view of the necessity to compensate for late availability of Government furnished governor and excitation equipment, it is in the best interest of the Government to extend the performance period of this contract.

B. CHANGE IN CONTRACT SPECIFICATIONS

Refer to contract paragraph 00800-1. Change the duration of the performance period from 450 days to 600 days.

C. CHANGE IN CONTRACT PRICE

Total contract price is unchanged.

D. CHANGE IN CONTRACT TIME

The contract completion date shall be extended 150 calendar days by reason of this modification.

E. CLOSING STATEMENT

It is understood and agreed that, pursuant to the above, the time for performance of all work under clause 00800-1 is EXTENDED 150 calendar days from March 3, ~~1999~~ as established by the original contract to July 31, ~~1999~~ and the total amount of contract remains unchanged. 2000

It is further understood and agreed that this time extension constitutes payment in full on behalf of the Contractor and its suppliers, for all delays directly or indirectly attributable to this modification and for performance of the work within the time stated.

Tri-Service Automated Cost Engineering System (TRACES)
PROJECT HPPAO3: Hydro-Power Plant Automation –
Final Installation Contract

Sat 19 Sep 1998 TIME 11:02:41
Eff. Date 10/22/98 Project Note: Final Estimate TITLE PAGE 2

SUMMARY OF REASONAL ESTIMATE

Under Solicitation No. DACU35-98-B-0024, dated 27 July 1998 with Amendment 0001, dated 14 August 1998, Amendment 0002, dated 17 August 1998, Amendment 0003, dated 24 August 1998, Amendment 0004, dated 27 August 1998, Amendment 0005, dated 31 August 1998, Amendment 0006, dated 04 September 1998, Amendment 0007 and dated 10 September 1998.

Bid Opening Scheduled for 1400 hours, 22 September 1998, as established in Amendment No. 0007.

Item No.	Description	Unit	UOM	Est. Amount
0001	Site Mobilization to Accomplish Work	1.00	JB	$ 15,170
0002	Site demobilization to remove equipment, cleanup and restore the site to original condition	1.00	JB	$ 15,170
0003	Engineering Design and Support	1.00	JB	$ 30,335
0004	Installation of the Excitation System for Units 1, 2 and 3	1.00	JB	$236,395
0005	Installation of the Excitation System for Unit 3A	1.00	JB	$ 74,930
0006	Installation of the Excitation System for Unit 10	1.00	JB	$190,840
0007	Installation of Units 1,2 and 3 Governor Retrofits	1.00	JB	$ 34,910
0008	Installation of Unit 3A Governor Retrofit	1.00	JB	$ 87,320
0009	Installation of Unit 10 Governor	1.00	JB	$132,760

LABOR ID: SSM98A EQUIP ID: MAT93A
Currency in DOLLARS CREW ID: MAT94A UPS ID: PTC95A

Item No.	Description	Unit	UOM	Est. Amount
0010	Installat[illegible]f SCADA System	1.00	JB	$ 77,350
0011	Neutral Grounding System	1.00	JB	$ 67,450
0012	Unit 10 Switchboard	1.00	JB	$ 24,505
0013	Miscellaneous Switchboard Modification	1.00	JB	$ 14,930
0014	15 kV and Switchgear Modifications	1.00	JB	$185,695
0015	Spare Parts	1.00	LT	$ 48,230
0016	Skilled Craftsman Hire (Hours Est.) (Optional)	1,000.00	$54.60/HR	$ 54,600
0017	Parts and Materials	1.00	JB	$ 15,000
	TOTAL AMOUNT OF BID			$1,305,590

Prepared and submitted By:

Sheetal Malhotra
PTEC, Sheetal Malhotra

Approved By:

David L. Bulong, P.E.
Chief, Engineering & Planning Division

Approved and Recommended By:

Joseph Ciemni, Acting Chief,
Cost & General Engineering Section

Date: 9/22/98

Time: 0800

FOR OFFICIAL USE ONLY
PLANTEC BIDDING IS CANCELLED
UPON AWARD OF CONTRACT OR MODIFICATION

OR BID OPENING OR 22 Oct 98
WHICHEVER IS EARLIER

LABOR ID: SSM98A EQUIP ID: MAT93A
Currency in DOLLARS CREW ID: MAT94A UPS ID: PTC95A

PAYMENT ESTIMATE - CONTRACT PERFORMANCE

For use of this form, see ER 37-2-10 and ER 37-345-10

1. INVOICE RECEIVE DATE: 26 Jan 99

SHEET 1 of 1

2. CONTRACTOR AND ADDRESS: Aptus Company 3527 Woodvalley Drive, Houston, Texas 77025-4232	3. CONTRACT NO.: DACW35-95-C-0001	4. DISTRICT: CELRE	
5. DESCRIPTION OF WORK: Install Power Plant Automation	6. APPROPRIATION AND PROJECT	7. REQUIRED COMPLETION DATE: 03 Mar 00	
8. LOCATION: Sault Ste. Marie, Michigan	9. PERIOD COVERED BY THIS ESTIMATE: FROM 09 Dec 98 THRU 23 Jan 99	10. JOB ORDER NO.	11. ESTIMATE NO: 1

ITEM NO. a	DESCRIPTION b	CONTRACT QUANTITY AND UNIT c	CONTRACT UNIT PRICE d	CONTRACT AMOUNT e	TOTAL TO DATE QUANTITY AND UNIT f	TOTAL TO DATE AMOUNT g
	BASIC CONTRACT			1,265,110.00		
	MODIFICATIONS Thru P00002			-40,000.00		
	QUANTITY VARIATIONS			0.00		

ACTUAL PERCENT 2 % LESS STORED MATERIALS: 2 % TOTAL CONTRACT ⟶ $ 1,225,110.00 TOTAL EARNINGS TO DATE ⟶ $ 19,997.00

REMARKS

THIS PAY REQUEST PROVIDES $19,977.00 FOR THE CONTRACTOR'S BONDS.

12. PRESENTED FOR PAYMENT		14.			
PAYEE: Aptus Company	PER	A.	PREVIOUS DEDUCTIONS OTHER THAN RETAINED PERCENTAGE	0.00	
		B.	PREVIOUS RETAINED PERCENTAGE	0.00	
DATE	TITLE	C.	PREVIOUS PAYMENTS	0.00	
		D.	PREVIOUS EARNINGS (A+B+C)		0.00
13. APPROVED FOR PAYMENT		E.	EARNINGS THIS PERIOD (TOTAL EARNINGS TO DATE MINUS D)		19,997.00
I CERTIFY that I have checked the quantities covered by this bill or estimate; that the work was actually performed; that the quantities are correct and consistent with all previous computations as actually checked; that the quantities and amounts are wholly consistent with the requirements of the contract or other instrument involved		F.	LESS RETAINED PERCENTAGE	0.00	
		G.	LESS DEDUCTION OTHER THAN RETAINED PERCENTAGE FOR	0.00	
		H.	TOTAL DEDUCTIONS THIS PERIOD (F+G)		0.00
SIGNATURE: James T. Peach	TITLE: Civil Engineer	I.	RETAINAGE REFUNDED	0.00	
		J.	OTHER REFUNDS	0.00	
		K.	TOTAL REFUNDS THIS PERIOD		0.00
CONTRACTING OFFICER APPROVAL (Signature): Stanley R. Jacek, P.E. Administrative Contracting Officer	DATE: 29 Jan 99	L.	AMOUNT DUE CONTRACTOR (E-H+K)		19,997.00
		15. RECAPITULATION			
		TOTAL RETAINED PCTG. (B+F+I) $ 0.00		TOTAL PAID (C+L) $	19,997.00

ENG FORM 93 1 MAR 78 PREVIOUS EDITION OF THIS FORM IS OBSOLETE * * (USE REVERSE SIDE FOR DETAILED EXPLANATION AND OR REMARKS)

PAYMENT ESTIMATE - CONTRACT PERFORMANCE

For use of this form, see ER 37-2-10 and ER 37-345-10.

1. INVOICE RECEIVE DATE: 30 Sep 99

SHEET 1 of 3

2. CONTRACTOR AND ADDRESS: Aptus Company, 3527 Woodvalley Drive, Houston, Texas 77025-4232	3. CONTRACT NO.: DACW35-99-C-0001	4. DISTRICT: CELRE
5. DESCRIPTION OF WORK: Install Power Plant Automation	6. APPROPRIATION AND PROJECT: -	7. REQUIRED COMPLETION DATE: 03 Mar 00
8. LOCATION: Sault Ste. Marie, Michigan	9. PERIOD COVERED BY THIS ESTIMATE: FROM 24 Jan 99 THRU 30 Sep 99	10. JOB ORDER NO.: - / 11. ESTIMATE NO.: 2

ITEM NO. a	DESCRIPTION b	CONTRACT QUANTITY AND UNIT c	CONTRACT UNIT PRICE d	CONTRACT AMOUNT e	TOTAL TO DATE QUANTITY AND UNIT f	TOTAL TO DATE AMOUNT g
	BASIC CONTRACT			1,265,110.00		
	MODIFICATIONS Thru P00002			-40,000.00		
	QUANTITY VARIATIONS			0.00		

ACTUAL PERCENT: 5 % LESS STORED MATERIALS: 5 % TOTAL CONTRACT → $ 1,225,110.00 TOTAL EARNINGS TO DATE → $ 56,497.00

REMARKS

RECEIVED
SEP 30 1999
SOO AREA OFFICE

12. PRESENTED FOR PAYMENT

PAYEE: Aptus Company

PER: S. Emanuel [illegible]

DATE: Sept. 30, 1999

TITLE: President

13. APPROVED FOR PAYMENT

I CERTIFY that I have checked the quantities covered by this bill or estimate, that the work was actually performed; that the quantities are correct and consistent with all previous computations as actually checked; that the quantities and amounts are wholly consistent with the requirements of the contract or other instrument involved.

SIGNATURE	TITLE	DATE
James T. Peach	Civil Engineer	30SEP99

CONTRACTING OFFICER APPROVAL: Stanley R. Jacek, P.E. — Administrative Contracting Officer — DATE: 14Oct99

14.			
A.	PREVIOUS DEDUCTIONS OTHER THAN RETAINED PERCENTAGE	0.00	
B.	PREVIOUS RETAINED PERCENTAGE	0.00	
C.	PREVIOUS PAYMENTS	19,997.00	
D.	PREVIOUS EARNINGS (A + B + C)		19,997.00
E.	EARNINGS THIS PERIOD (TOTAL EARNINGS TO DATE MINUS D)		36,500.00
F.	LESS RETAINED PERCENTAGE	0.00	
G.	LESS DEDUCTION OTHER THAN RETAINED PERCENTAGE FOR	0.00	
H.	TOTAL DEDUCTIONS THIS PERIOD (F + G)		0.00
I.	RETAINAGE REFUNDED	0.00	
J.	OTHER REFUNDS	0.00	
K.	TOTAL REFUNDS THIS PERIOD		0.00
L.	AMOUNT DUE CONTRACTOR (E H + K)		36,500.00

15. RECAPITULATION

TOTAL RETAINED PCTG (B + F) $ 0.00 TOTAL PAID (C + L) $ 56,497.00

ENG FORM 93 1 MAR 78 — PREVIOUS EDITION OF THIS FORM IS OBSOLETE — * * USE REVERSE SIDE FOR DETAILED EXPLANATION AND OR REMARKS

Thursday November 14, 2002

S. Emanuel Lin
APTUS Company
3527 Woodvalley Drive
Houston, TX 77025-4232

Mr. Alan J. Harlan
Hance Scarborough Wright Ginsberg & Brusilow
750 Signature Place
14785 Preston Road
Dallas, TX 75254-7882

via FedEx Overnight (#835604818219)

Re: First installment of $110,000
Mapfre Reinsurance Corp. v Shihche E. Lin, et al
189th District Court of Harris County, Texas
(Case No. 2000-56702A)

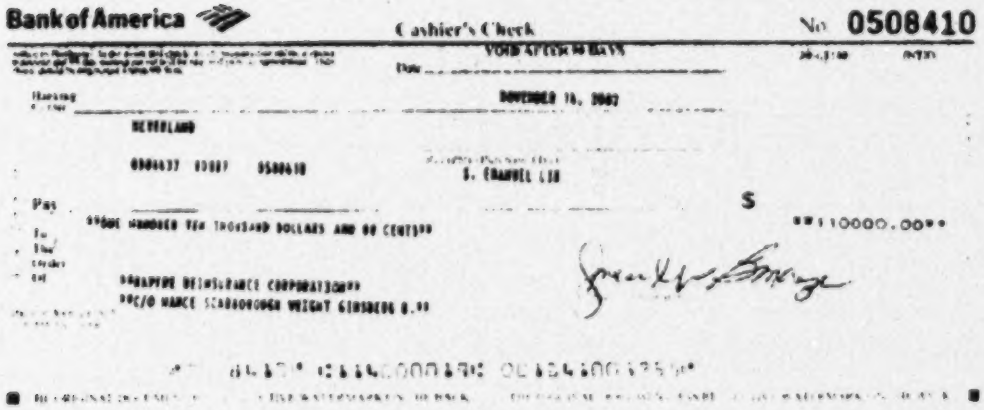
Dear Mr. Harlan,

Enclosed in the FedEx envelope is a cashier check from Bank of America (No. 0508410) in the amount of $110,000 as partial fulfillment of the settlement for the above referenced case. The remaining and last installment of $65,000 in cashier check will be mailed to you via FedEx Overnight on Thursday January 2, 2003.

Advanced copy of this letter, FedEx Airbill and the check will be faxed to you around 1:00 p.m. today after I take them to FedEx for delivery.

Sincerely yours

S. Emanuel Lin


Bank of America
Cashier's Check
No 0508410
VOID AFTER 90 DAYS
NOVEMBER 14, 2002
S. EMANUEL LIN
Pay
$
110000.00
To the order of
SHAFFER REINSURANCE CORPORATION**
C/O HANCE SCARBOROUGH WRIGHT GINSBERG &

Tuesday January 02, 2003

S. Emanuel Lin
APTUS Company
3527 Woodvalley Drive
Houston, TX 77025-4232

Mr. Alan J. Harlan
Hance Scarborough Wright Ginsberg & Brusilow
750 Signature Place
14785 Preston Road
Dallas, TX 75254-7882 via FedEx Overnight (#835604818208)
972-788-1600, 702-0662 fax

Re: Second and last installment of $65,000
Mapfre Reinsurance Corp. v Shihche E. Lin, et al
189th District Court of Harris County, Texas
(Case No. 2000-56702A)

Dear Mr. Harlan,

Enclosed in the FedEx envelope is a cashier check from Bank of America (No. 0665304) in the amount of $65,000 to complete the fulfillment of the entire settlement agreement for the above referenced case.

Please provide me a Release of Judgment for filing in your earliest convenience. Thanks.

Advanced copy of this letter, FedEx Airbill and the check will be faxed to you around 4:00 p.m. today when I return from FedEx.

Sincerely yours

S Emanuel Lin

Bank of America Cashier's Check No. 0665304

Date JANUARY 02, 2003

S. EMANUEL LIN, DBA APTUS CO.

Pay **SIXTY FIVE THOUSAND DOLLARS AND 00 CENTS** $ **65000.00**

MAPFRE REINSURANCE CORP.
C/O HANCE SCARBOROUGH WRIGHT GINSBERG B.

Contracting Officer's Statement

1. On 17 July 1998, an Invitation for Bids (IFB) No. DACW35-98-B-0024 was issued on an unrestricted basis. The solicitation requested sealed bids for the installation of Governor, Excitation and SCADA Systems for Powerplant Automation at St. Mary's River, Michigan. The solicitation was sent to interested bidders on a compact disc. Tab A.

2. During the course of the advertisement period, seven amendments were issued.

3. Two bids were received prior to 1400 hours, 27 August 1998, the official close of the bid .--acceptance period. Bids were received from:

a. Aptus Company (Tab B) b. Koontz Electric Company Inc. (Tab C)

4. Upon evaluation of the bids, both firms were found to be responsive. Aptus Company had the lower bid at $1,265,110.00. Koontz Electric had a bid of $1,820,000, an amount that is 39 percent higher than the Government Estimate. Tab D. As such, Koontz Electric was not eligible for award of the contract as a matter of law. See 33 U.S.C. 622 and 624, Engineer FAR Supplement (EFARS) 36.205. Tab E.

5. Since Koontz Electric is not in line for award, it has no standing to challenge the award to Aptus Company. However, even if Koontz had standing there is no reason why Aptus Company should be denied the award of the contract.

6. I found Aptus Company to be a responsible contractor after a thorough preaward survey was conducted. Aptus is responsible for the following reasons:

a. The firm has adequate resources, backed up with performance and payment bonds.
b. It has an ability to comply with the required delivery schedule.
c. It has a satisfactory record of performance.
d. It has never defaulted and completed other contracts.
e. It has a satisfactory record of integrity.
f. It is not disbarred.
g. It has commitments to hire the necessary personnel and to have the necessary equipment available to perform the work. Tab F.

7. The preaward survey is sufficient, but it is necessary to amplify on the problems Aptus may have had with the the Savannah District Corps of Engineers contract. Aptus's contract with the Savannah District was not terminated for default but rather by agreement of the parties. Furthermore, if for any reason Aptus is unable to perform, the government is protect nonetheless with performance and payment bonds. Tab G.

8. Performance under the contract has been suspended. Tab H.

Based on the facts, I have set forth above, and the legal analysis appended to this report, I conclude Koontz Electric Company has sustained no competitive harm and has no standing to challenge the award to Aptus. I recommend that the protest be denied.

George Fedynsky
Contracting Officer

APTUS COMPANY
3527 WOODVALLEY DR.
HOUSTON, TEXAS 77025-4232
Fax & Phone: (713) 666-3816

Monday January 4, 1999

Mr. Stanley R. Jacek, P.E.
U. S. Army Corps of Engineers, District Detroit
Soo Area Office
St. Mary's Fall Canal
Sault Ste. Marie, MI 49783 via fax to 906-635-3474

Re: Contract No. DACW35-99-C-0001
Powerhouse Automation Equipment Installation
at Sault Ste. Marie, Michigan

Proposed Construction Schedule & Installation Plan

Dear Mr. Jacek,

Attached please find 19 pages of proposed construction schedule and installation plan.

The construction is scheduled to begin on or around 2/15/99 with the installation of Unit 10 governor. Upon its successful operation, the contract would proceed to the retrofit of Unit 1 governor, followed by Units 2, 3 and 3A respectively. Only upon all the retrofitted governors are functional will the construction move to the upgrade of exciters.

I believe altering only one major component of a generator at a time would help us isolate and identify the problem more easily when thing doesn't go as we have expected.

Thank you and your staff for the courtesy and the assistance bestowed upon me during my three-day site visit in December 1998.

Sincerely yours

S. Emanuel Lin

S. Emanuel Lin

CELRE-SO 17 March 1999

MEMORANDUM FOR RECORD

SUBJECT: CONTRACT DACW35-99-0001; POWER PLANT INSTALLATION

1. ...

2. ...

3. I asked Mr. Lin for any immediate concerns. He had none. He described a recent visit with Christine Zeigler, the governor system designer at Voith Hydro. She eliminated a major concern by explaining certain mechanical aspects of the governor installation. The proportion of mechanical work and the dimensions of piping are smaller than Mr. Lin expected.

4. ...

5. Mr. Lin is currently devoting time to the neutral grounding system and ground fault system designs.

6. Mr. Lin will assemble his own crew rather than employ a subcontractor. Physical work may begin as soon as May. A large portion of the required work can be completed without an outage. Therefore, the Aptus crew will do considerable work at all five locations before an outage is requested. Outage time will be reserved for the relatively small number of activities which require it.

7. ...

8. Mr. Lin recommends that the brackets which will support speed sensing gear at all five units be mounted differently than Voith proposes. Rather than tapping into the surface of an existing plate to anchor the assembly, Mr. Lin would utilize existing bolts in an adjacent gusset. This would simplify installation, assure good anchorage and eliminate the need to tap into a our plate. 9on Erfourth is receptive. We will discuss it with Rod Shank (H.D.C.). If we proceed with the idea, Mr. Lin will

CELRE-SO 17 March 1999
SUBJECT: CONTRACT DACW35-99-0001; POWER PLANT INSTALLATION

provide the necessary measurements to the designer at Voith. Note that this "change" is merely a design choice. It does not entail a contract modification.

9. ...

- ...

- Don noted that a portion of the required testing must take place during the outage periods. Testing time is included in the outage. Mr. Lin feels that this is hardly fair since the testing is performed by the suppliers, not by the installer.

- Installation of conduit runs for the excitation system will require that two air handling units and one fire extinguisher be moved. Mr. Lin suggests that someone else should move them. Don replied that it is part of installation.

Mr. Lin promises to consider these issues. He has not taken a confrontational stance.

10. ...

11. Mr. Lin requested a copy of the design drawings for all four contracts. This is necessary to support preparation of "as- builts". I showed him the CD. When his new lap top P.C. arrives in a few days, he will visit Engineering Section at the So0 and make a copy.

12. ...

Jim Peach
Civil Engineer

Supplemental info/discussion to my 3/20/99 letter

Subject: Supplemental info/discussion to my 3/20/99 letter
Date: Sun, 21 Mar 1999 17:15:54 -0500
From: "S.Emanuel Lin" <aptus@30below.com>
To: "cgzeigler@voithyork.com" <cgzeigler@voithyork.com>
CC: Jim.T.Peach@LRE02.usace.army.mil,
Rod.J.Shank@nwp01.usace.army.mil

Dear Christine,

...

Upon close look on your existing teeth disc design, I am not sure whether it comes in one piece or two with the teeth disc sitting on top of and fastened to a "collar" by four screws/nuts from under. If it were the later, does this mean we can not install the disc assembly up side down? Mounting the disc assembly with collar spinning on the top, instead on the bottom as drawn, in certain circumstance, may reduce the possibility of having the collar hitting human body parts. In one of our discussion, Don (Mr. Erfourth) brought this upside-down issue up.

For a fairly tight clamp[p]ing of the collar, i.e. at least to the extent that it could not be slided up or down by two hands, the clamp[p]ing diameter of your base would be at least a few hundredth of an inch smaller than the generator axial. Regardless whether the measurement was taken at the designated clamp[p]ing location, the diameter taken while the axial was spinning would probably give you a few hundredth of an inch LARGER than the actual one. Furthermore, I really doubt these big 19"-or 13"-OD generator axials weighing in tons were milled to such a precision that one could safely think that they all have same diameter for the purpose of producing identical copies of discs.

...

Sincerely yours Emanuel Lin

APTUS COMPANY
3527 WOODVALLEY DR.
HOUSTON, TEXAS 77025-4232
Fax & Phone: (713) 666-3816

Wednesday March 24, 1999

To: Ms. Christine G.Zeigler, Voith Hydro Inc.
Cc: Jim Peach, USACE, Sault Ste. Marie
Re: Contract No. DACW35-99-C-0001
Power Plant Automation Installation at Sault Ste. Marie, MI
2nd Measurement For Governor Speed Sensor Installation

Dear Christine,

The collection of dimensions as sketched and attached hereto was accomplished through the removal of two adjacent periphery bolts from generators' guide bearing housing frames, or oil pans in short.

Existing periphery bolts use bronze washer to prevent oil from sipping out of the oil pan. Your sensor bracket base plate may need to be sandwiched between two such washers. Plant operator has given me 10.

I have no preference to which part of speed disc body will be mounted closer to the oil pan. It would be desirable to have enough clearance around the clamping bolts so that they can be tightened with socket wrench. This may come in handy at Unit 3A where the existing protective "fence" restricts tool access to the disc considerably.

Unit 10 governor used to be driven by a belt from the generator axial. That's why a section of the axial is "shaved" a little bit smaller to accommodate the belt. I guess, it also left three threaded holes on and through the thick (about 1.25") circular plate structure welded between the I-beam and the guide bearing housing frame. You may want to mount your bracket base plate on two of existing holes as sketched. No welding would be needed.

Everything under 5.5" was measured with a caliper, therefore, more accurate. Your sensor is pretty light. If you use a thin sensor bracket to lift the sensor in parallel to the oil pan, it would leave more threads on the sensor for me to adjust its operating distance. Consequently, your bracket base plate can tolerate my measurement better.

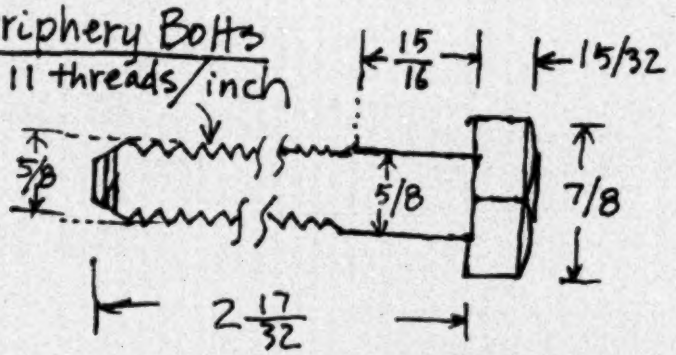
Sincerely yours

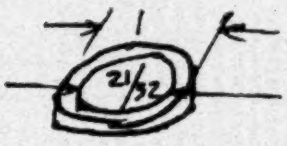
S. Emanuel Lin

UNITS 1, 2, 3

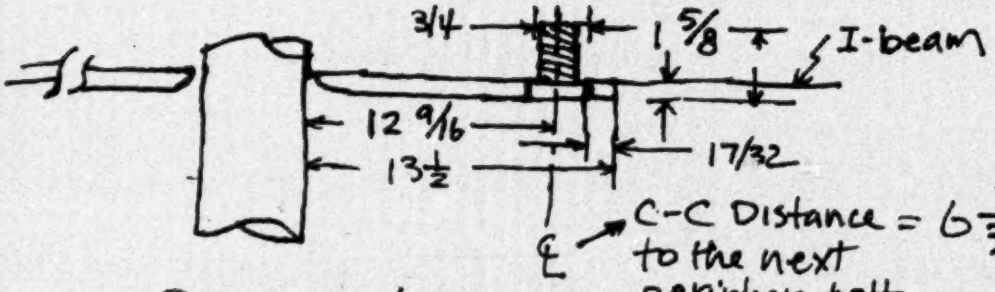
Periphery Bolts

11 threads/inch



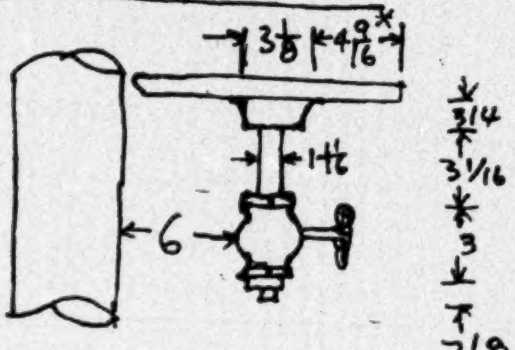


Bronze Washer:
OD = 1"
ID = 21/32
Thick = 1/32



C-C Distance = $6\frac{7}{32}$ to the next periphery bolt

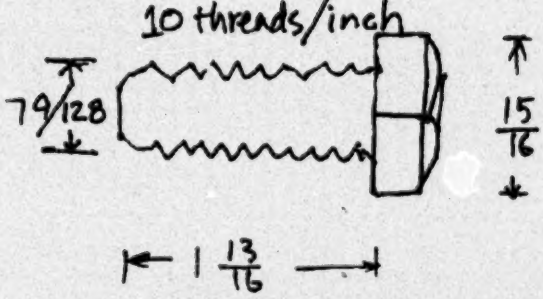
Oil Drains/Obstacles



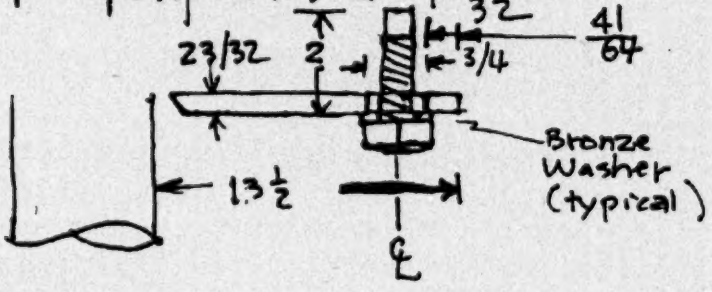
* For "boxy" drain ba you only have 3 1/16 to outer edge of oil pan.

Unit 3A

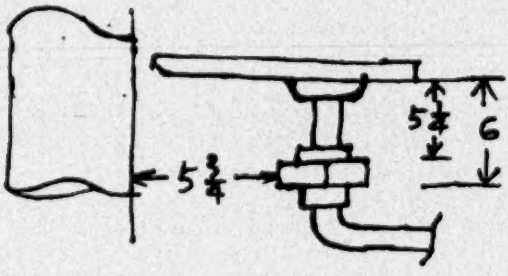
Peripery Bolt



C-C Distance between 2 adjacent peripery bolts = $4\frac{31}{32}$

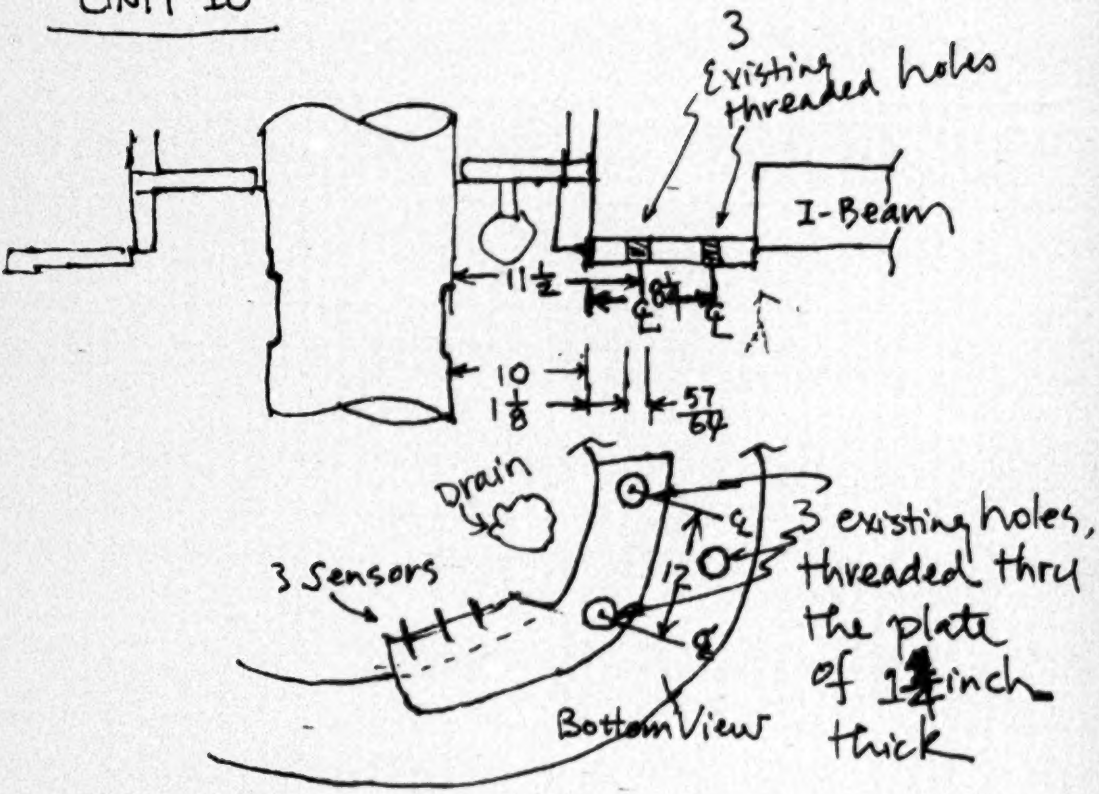


Oil Drain Pipe



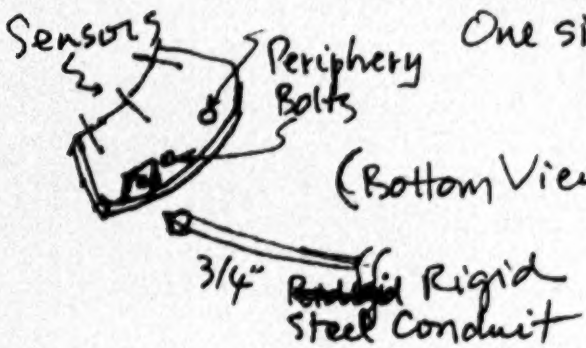
P. 3

UNIT 10



Conduit Attachment Bracket

(Typical, on the periphery, not the radial side)
One side fits all.



From: cgzeigler@voithyork.com
Sent: Wednesday, March 24, 1999 8:41 AM
To: S. Emanuel Lin
Subject: Re: 2nd sketch has been faxed

Thank you for your fax Emanuel. We are working now on the new dwgs.

One question I forgot to answer was about the type of bolts we intend to use. They are all hex head or socket head type.

Also, I have looked into replacement probes and have found a smaller size that can use the same connector that is presently on site. I would prefer to use this type instead of the molded cable type so that a damaged cable will not result in scrapping the entire speed probe.

Best regards,

Christine

DEPARTMENT OF THE ARMY
DETROIT DISTRICT CORPS OF ENGINEERS
BOX 1027
DETROIT, MICHIGAN 48231-1027

IN REPLY REFER TO:

December 2, 1999

Construction-Operations Division
Construction Branch

SUBJECT: Contract No. DACW35-99-C-0001, Powerplant Automation Installation, Sault Ste. Marie, Michigan

Aptus Company
3527 Woodvalley Drive
Houston, Texas 77025

Gentlemen:

Enclosed are the original and two (2) copies of your Construction Progress Chart, approved subject to the Contract Clauses.

Approval of your construction progress chart does not waive the provisions of the *CONTINUING CONTRACTS* clause. The approval of a progress schedule is not a funding action and shall in no event be considered as making funds available or as obligating the Government to make funds available.

Your attention is directed to *COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (Apr 1984);* wherein, it states, in part: "The time stated for completion shall include final cleanup of the premises."

Sincerely,

Michael K. O'Bryan

Michael K. O'Bryan, P.E.
Contracting Officer's Representative

Enclosures

CONVERSATION RECORD TIME A.M./P.M. DATE 10-DEC-99

TYPE: CONFERENCE TELEPHONE

CONTACTED	ORGANIZATION	TELEPHONE NUMBER
Rod Shank	Hydroelectric Design Ctr	(503) 808-4259
Steve Rose	Electrical Branch	(906) 635-3469

SUBJECT: Power Plant Automation Project -- All Contracts

1. SCADA Items . . .
2. ABB . . .
3. Voith

- Reviewers must respond to Voith transmittals. Jim promised to send an submittal tracking list to Rod. Rod will talk to Mark Lindstrum to make sure HDC is on track.

  Action item: Send transmittal info to Rod at HDC

- Don Erfourth spoke with the Voith field engineer (Bill Eberman) about the oversized mounting holes on the Unit 10 servomotor pedestal. Bill discussed a couple of acceptable "fixes" that satisfy Don. Jim Peach will talk to the project engineer (Bob Baginski) to verify when we will get the official proposal and the actual correction.

Action item: Talk to Bob Baginski about the Unit 10 servomotor pedestal.

- Mr. Lin has asked Jim Peach about reference numbers with appear on the Voith installation drawings. These reference numbers should key to a component list which is not provided. Rod said that Voith will provide this key with the final O&M manual submittal. Mr. Lin shouldn't be worried about this info. However, since he has expressed interest, we could ask Voith for a list right now.

  Action item: Ask Bob Baginski for a copy of the key to drawing reference numbers.

4. APTUS

- Mr. Lin has provided his first significant design submittal (Neutral Grounding System). Rod is reviewing it and will have comments to us soon. Rod says that it is a credible design. He will probably recommend rejection of this first effort. However, after Mr. Lin applies some corrections, it should be acceptable. Rod said that some aspects of the design are novel. For example, a cut-out selected for use in the cabinet is of a type that would normally be installed on top of a utility pole. It appears to be functionally equivalent and, doubtless, saves Aptus some money. He will investigate carefully to make sure that the mounting is secure enough for our purposes. Steve said that Don will try to review the submittal over the weekend.

Page 2 of 3

Jim Peach — Civil Engineer — 14 December, 1999

CONVERSATION RECORD

CONTRACTORS QUALITY CONTROL REPORT (QCR)
DAILY LOG OF CONSTRUCTION - MILITARY

REPORT NUMBER 393 PAGE 1

DATE 06 Jan 00 - Thursday

PROJECT
Installation of Power Plant Automation, Sault Ste. Marie, Michigan

CONTRACT NUMBER
DACW35-99-C-3001

CONTRACTOR
Aptus Company

WEATHER
Temperature Min 17°F Max 27°F, 0.3 Inches Precipitation

QC NARRATIVE(S)

Activities in Progress:
Placement of HPU and accumulator rack at Unit 10.

PREP/INITIAL DATES (Preparatory and inital dates held and advance notice)

No preparatory or initial inspections were held today.

ACTIVITY START/FINISH

No activities were started or finished today.

QC REQUIREMENTS

No QC requirements were completed today.

QA/QC COMMENTS (Describe QC comments issued, report QA and QC comments corrected)

No QC comments were issued today.

CONTRACTORS ON SITE (Report contractor's first and/or last date on site)

No contractors were reported on site today.

LABOR HOURS

The following labor hours were reported today:

Employer	Labor Classification	Number of Employees	Hours Worked
APTUS COMPANY		2.0	4.0

Total hours worked to date 4.0

EQUIPMENT HOURS

No equipment hours were reported today.

EQUIPMENT CHECKS

No equipment inspections were conducted today.

SAFETY CORRECTIONS (Report corrective actions for safety violations)

No outstanding safety violations.

Peach, James T LRE

From: Peach, James T LRE
Sent: Saturday, January 15, 2000 2:18 PM
To: Jacek, Stanley R LRE
CC: Britz, Trudi A LRE; Schloop, Wayne LRE; Erfourth, Donald G LRE; Rose, Steven S LRE; Hill, Marilyn R LRE; Fedynsky, George LRE

Subject: Sault Installation

If Mr. Lin provides a satisfactory response to the Cure Notice, the following plan might bring the best outcome.

1. Remove the SCADA work from the installation contract. Direct Mr. Lin to complete installation of his own equipment as well as the exciters and governors. This would make the July 31, 2000 completion date final.

2. Make fairly liberal use of the erection engineer services provided in the excitation and governor contracts. These are very competent field engineers want the equipment installed correctly.

3. Give SCIPAR an RFP to add installation of SCADA equipment. This would assure the fastest possible SCADA installation following delivery.

- Jim Peach

DACW35-99-C-0001
General Journal
For the Period Jan 1, 2000 to Dec 31, 2000

Date	Reference	Trans Description	Debit Amt
1/4/0	Mackinac Bridge	4:08 toll, driving thru snow storm	1.50
1/8/0	OfficeMax	16:17 Sat. B&W self-serve copy	0.58
1/14/0	OfficeMax	18:56 B&W self-serve copy	0.20
1/22/0	Wal-Mart	14:03 Compass	1.03
1/27/0	Wal- Mart	19:45 Shampoo	1.57
2/17/0	Steffens Hardware	¼" wedge anchors	2.65
2/18/0	OfficeMax	20:30 Fri. B&W self-serve copy 11x17	0.22
3/10/0	OfficeMax	21:09 Color copy generator disassembly	1.59
3/15/0	OfficeMax	19:53 Self-serve B&W copy	0.64
4/11/0	OfficeMax	13:23 Copy 17 @ $.01	0.19
4/21/0	OfficeMax	20:58 Friday, Self-serve B&W copy	0.13
5/6/0	OfficeMax	14:23 Copy	0.13
5/13/0	OfficeMax	19:30 Copy	0.20
5/15/0	OfficeMax	20:54 Copy	0.26
5/16/0	USPS	13:17 Postage	0.99
5/22/0	Mackinac Bridge	13:50 toll, visit Petoskey Electric Motor	1.50
5/22/0	Mackinac Bridge	17:56 toll, return from Petoskey Electric	1.50
5/24/0	Mackinac Bridge	21:10 toll to go to COE/Detroit	1.50
5/25/0	Handy Parking	Parking for COE/Detroit meeting	7.00
5/26/0	Mackinac Bridge	0:56 return to apt. from COE/Detroit	1.50
8/1/0	Mackinac Bridge	16:38 toll, moving home	2.50
...			
...			
...			
1/4/0	Ashmun Creek Ap	Soo apartment rental	480.00
1/5/0	Metro Allied Ins.	General liability insurance	1,417.00
1/10/0	Gary Horner	Compensation, no withholding	210.00
1/10/0	Doug Chritensen	Wage & benefits, no withholding	96.00
1/17/0	Doug Christensen	Wage & benefits, no withholding	248.00
1/17/0	Gary Horner	Compensat'n, no withhold, 1/13 last day	270.00
1/17/0	Ezra Glenn	Wage & benefits, no withholding	108.00
...			
1/24/0	Doug Christensen	Wage & benefits, no withholding	298.00
1/24/0	Ezra Glenn	Wage & benefits, no withholding	228.00
1/24/0	Juriy Dubinin	Compensation, no withholding	785.00
...			
1/31/0	Doug Christensen	Wage & benefits, no withholding	150.00

BEST AVAILABLE COPY

11

APPROVED	SUBMITTAL
28 FEB 00	EMPLOYEE'S LIST AND CONTRACTORS PERSONNEL REQUIREMENTS PER 01100-1. THE LIST SHALL INCLUDE AS A MINIMUM 1. ELECTRICIANS 2. MECHANICS PER 15050 (3.1.4) 3. WELDERS 4. BRIDGE CRANE OPERATORS PER 01100 (1.6.3) 5. RIGGERS PER 01100 (1.6.3) 6. HIGH VOLTAGE WORKERS 7. CABLE PULLERS 8. GENERATOR DISASSEMBLER PER 16050 (3.2.3) 9. SUBMITTAL CLERK PER 01451 (3.4.3) 10. ELECTRICAL ENGINEER PER 16051 (1.1.2)
28 FEB 00	DEBRIS DISPOSAL AREA PER 01100 (SD-01) DISPOSAL OF FLUSHING OIL, CHEMICAL BIOCIDES, ETC.
28 FEB 00	PLANT AND EQUIPMENT LIST PER 1100 (1.5.1)
5 [illegible]	PIPE FLUSHING AND CLEANING PLAN PER 15050 (SD-08)

12

UNIT	SUBMITTAL
28 FEB 00	ENVIRONMENTAL PROTECTION PLAN TO COVER OIL SPILLS TRAINING OF PERSONNEL - PCN 01130 (1.5)
15 APR 00	GENERATOR NEUTRAL GROUND SYSTEM, ALL UNITS. TO INCLUDE 15050 (3.2.2) AND 16050 (SD-04) (SD-06) (3.12) (1.6)
26 MAY 00	NEUTRAL GROUND SYSTEM TEST RESULTS PCN 16050 (3.15.4), 3.12
25 APR 00	PLANT WIDE GROUND FAULT SYSTEM: PCN 16050 (SD-04) AND SD-06, (3.12)
15 APR 00	BREAKER CAPACITOR TRIP DEVICE & COIL MONITOR PCN 16050 (SD-04) AND (SD-06) (3.11)
15 MAR 00	O&M MANUAL PCN 16050 (SD-06).

13

APPROVED	SUBMITTED
15 APL 00	PIPE AND WIRE ASSEMBLY ABLE VOILE PCN 16050 SD-04 AND SD-06 TO INCLUDE ALL ITEMS, SHOP DRAWINGS, CATALOG CUTS, WIRES, CABLES, CONDUIT, OUTLINE DRAWINGS, CONNECTION DIAGRAMS, INSTALLATION INSTRUCTIONS, REMOVAL AND MODIFICATION PLANS.
10 APL 00	WIRE TEST PROCEDURE PCN 16050 (3,12,6).
1 PL 00	WIRE MARKER CERTIFICATIONS PCN 16050 (2,18.5)
10 APL 00	TEST PLAN AND FORMS PCN 16050 SD-13

14

UNIT 10

Amended	
13 MAY 80	NEW INTERRUPTER SWITCHGEAR, CONDUIT WIRE, PIN 15050 (3,2,2), 16050 (SD-04)(SD-06)(3,14,1)(3,12)
13 MAY 80	NEW SWITCHBOARD, ENCLOSURE, CONDUIT PIN 15050 (3,2,2) 16050 (SD-04)(SD06)(3,14,1)(3,12)
15 APRIL	CONTROL & COMM CABLES TO MAIN PLANT PIN 15050(3,2,2) 16050 (SD-04)(SD06)(3,14,1)(3,12)(3,12,6)(2,10,12) (3,12)

E

UNIT 10

DATE	SUBMITTAL
28 FEB 00	GOVERNOR HYDRAULIC PIPING PER 15050 (SD-04) (3.12)
28 FEB 00	GENERATOR BRAKE HYDRAULIC PIPING PER 15050 (SD-04) (3.12)
15 MARCH 00	GENERATOR BRAKES PER 15050 (SD-04) (SD-08) (3.22) (3.12)
15 MARCH 00	VOITH SPEED SENSING ASSEMBLY PER 16050 (SD-04) (SD-06) (3.12)
15 MARCH 00	GATE POSITION & SPEED CONTROL ON BINDER READING PER 16050 (SD-04) (SD-05) (3.12)
1 MAY 00	VOITH GOVERNOR O+M MANUAL PER 16050 (SD-6)
15 MAY 00	OLD RELAY & SWIRM DAMPERS, CT'S, PT'S, BUS PER 16050 (SD-6) (1.6.3) - INSTRUCTIONS FOR REMOVAL

UNIT 10

15 MAY 80	A38 SHUNT, BRUSHLESS CONTROL, PMT PCN 15050 (3,2,2) 16050 (1,6,7) (50-4)(50-6)(3,12)
15 MAY 80	EXCITER FIELD METER, CONTROL GAIN BIMIN PCN 16050(1,6,3) (50-4)(50-6)(3,12)
15 MAY 80	ROTATING PARTS ON OLD EXCITER PCN 16050 (3,2,3)(50-6) (1,6,3)
~~15 MAY 80~~	~~MAIN POWER TRANSFORMER AUTO RESTART PCN 16050(1,6,3)(50-6) (50-4),~~
15 MAY 80	WATTHOUR METER AT MAIN POWER PLANT PCN 16050 (50-4)(50-6)(1,6,3)(3,12)

12

UNIT 10

ADDENDUM L T	
15MAY00	1988 STATIC EXCITATION SYSTEM PER 16050 (4.6.3)(SD-4) (SD-6)(3.12)
15MAY00	OLD EXCITATION FIELD BREAKER & RHEOSTAT PER 16050 (4.6.3)(SD-6).
15MAY00	OLD GOVERNOR SUMP PUMP MOTOR THRU PER 16050 (SD-6).
15MAY00	CURRENT LIMITING FUSES PER 16050 (SD-4)(SD-5), ((4.6.3)
15MAY00	GENERATOR BREAKER EXCITATION TRIP DEVICE PER 16050 (SD-4)(SD-6)(3.12)
15MAY00	BREAKER TRIP COIL (2BT) MOUNTING PER 16050 (SD-4)(SD-6) (3.12)

8

UNIT 10

13 MAY	D C FIELD LEADS PER 16050 (50-4)(50-5)(3,12)
15 MAY	CONDUIT AND CABLE SCHEDULE PER 16050 (50-4)(50-8)(3,12)(3,12,6)(3,12,1)(1,6,3)

UNIT 3A

15 APR 00	ROTATING EXCITER DISCONNECT PER 16050 (SD-6) (1.6.3)
20 APR 00	OLD EXCITATION FIELD BREAKER & RHEOSTAT PER 16050 (SD-6) (1.6.3)
30 APR 00	ABB'S METER CONTROL SWITCH ON BENCH BOARD PER 16050 (SD-4) (SD-6) (1.6.3) (3.12)
31 MAY 00	CURRENT LIMITING FUSES 16050 (SD-4) (SD-6) (1.6.3) (3.12)
30 APR 00	GENERATOR BRUSH (2A61) (2A62) CAP TRIP DEVICE PER 16050 (SD-4) (SD-6) (1.6.3) (3.12)
30 APR 00	BRUSHLIFT TRIP COIL (2BT) NOMINAL PER 16050 (SD-4) (SD-6) (1.6.3) (3.12)
30 APR 00	DC FIELD LEADS PER 16050 (SD-4) (SD-6) (3.12) (1.6.3) 15050 (3.2.1)
30 APR 00	CONDUIT AND CABLE SCHEDULE PER 16050 (SD-4) (SD-6) (3.12) (3.12.6) (3.12.1)

112

MAIN UNITS 1, 2 AND 3

30 APL 00	GOV SPEED DIGITON ASSEMBLY CONDUIT RUNS PER 16050 (50-4)" (3.1L)
30 APL 00	OLD ROTATING EXCITER PARTS PER 16050 (3.2.3)(50-6)
30 APL 00	OLD EXCITATION FIELD BREAKER & RHEOSTAT PER 16050 50-06
30 APL 00	ABB BRIDGE, BREATHER & CONTROL XFMR CONDUIT & WIRING
30 APL 00	CURRENT LIMINATING FUSES PER 16050 (50-4)(2.63) (3.12)
30 APL 00	GENERATOR BRKR CASUALTY TRIP DEVICE PER 16050(50-4) (2.63) (3.12)(50-6)
30 APL 00	BREAKER TRIP COIL MONITOR PER 16050(50-4)(50-6)(16.7) (3.12)
30 APL 00	DC FIELD LEADS PER 16050 (50-4)(50-6)(3.12) 15050(3.2.2)
30 APL 00	CONDUIT AND CABLE SCHEDULE PER 16050 (50-4)(50-6) (3.12) (3.12.6)(3.12.1)

5TH AND 15TH U/V SWITCHGEAR

LL

APRIL 29	ANNUNCIATOR REWIRING PER 16050 (SD-4)(SD-6) (3,12)
APL 29	PLT BAIL POTENTIAL TRANSFORMERS PER 16050 (SD-6)
APL 29	BUS 1+2, 3A STATION SURGE ARRESTORS PER 16070 (SD-4) (3,12) (SD-6)
APL 29	BUS TIE CABLES 1+2 POTENTIAL TRANSFORMERS PER 16050 (SD-4)(SD-6)(3,12)

SCADA

#2

3 JUNE 88	WATTHOUR METERS;	PTN 16050 (SD-04)(SD-06)(3,12) (1,63) AND 15050 (3,2,2)
	RTU UNIT 10;	
	RTU UNIT 3A;	
	RTU UNIT 1;	
	RTU UNIT 2;	
	RTU UNIT 3;	
	RTU SPARE;	
	TRANSDUCERS;	
	TIE ANNUNCIATOR POINTS INTO SCADA;	
	INSTALL AUTOMATIC SYNCHRONIZER PANELS;	
	INSTALL STATIC CHECK RELAYS;	
	INSTALL MASTER STATIONS;	
	INSTALL UPS BATTERY SYSTEM;	

SCADA

113

30 JUNE 88	INSTALL UPS SYSTEM
	INSTALL WATER QUALITY SYSTEM.
	INSTALL DEVICE BOARD CONTROLS.
	INSTALL WATER TREATMENT TRANSMITTERS & PROBES.
	CONDUIT AND CABLE SCHEDULE PER 16050 (SD-04)(SD-06)(3.12) (3.12.6)(3.12.1)

CONVERSATION RECORD TIME 3:00 PM DATE 23-Feb-00

TYPE VISIT CONFERENCE TELEPHONE ROUTING

LOCATION OF VISIT/CONFERENCE

PERSON CONTACTED	ORGANIZATION	TELEPHONE NUMBER
S. Emmanual Lin	Aptus Company	(906) 632-1853
Don Erfourth	Soo Area Office	(906) 635-3468

TO _____
SJ _____
DE _____
JP _____

SUBJECT

DACW35-99-C-0001 - INSTALLATION CONTRACT

1. Today at 3:00pm, I sat down with Mr. Lin and Don Erfourth to discuss contract completion.
2. Mr. Lin believes that work is progressing at a reasonable pace. Issuance of a cure notice, he believes, was unfair. It was based on unfounded fears on the part of field personnel. He is indignant at the suggestion that he should make a special effort to explain and justify his plans and progress. He believes that the dates in his latest proposed schedule are still achievable. He believes it extremely unfair that we would contact his bonding company. In general, Mr. Lin says that the Government is attempting to "micromanage" this project.
3. Mr. Lin stated that appropriate personnel will be hired as specific work activities approach. For example, a welder will be hired before welding. I asked Mr. Lin to put his current engineer Mr. Dubinin in the QC Plan resubmittal that he owes us for approval. Mr. Lin expressed concern that we will place unrealistic, unjustified requirements on his staff selections. He assured us earnestly that he is extremely careful about his hiring choices. We can rely on his judgement. We replied that the Government also has the responsibility to exercise judgement.
4. He called our attention to page 16050-6 of the specification where it points out that shop drawings from Aptus are not required in cases where drawings from the supply contractors are available. We agree.
5. Mr. Lin is in the process of reviewing submittal notes provided by Don Erfourth at yesterday's meeting. He <u>appears</u> to be in <u>general</u> agreement and said that we will get required submittals.
   HE DID NOT DISAGREE IN ANY WAY WITH MY SUBMITTAL LIST, OR THAT IT IS SIMILAR TO WHAT MISTOCK HAS USED SUBMITTAL REQUIREMENTS.
6. Mr. Lin expressed displeasure with some of the submittal comments Issued by the Government. As an example, he mentioned the disconnect switch included in transmittal 10. The Government asked for documentation that this outdoor type switch is suitable for use in an indoor enclosure (as shown). Don Erfourth said that this is a reasonable concern and the same comment is included in our review of the resubmittal (transmittal 10.1). Apparently, Mr. Lin feels that this comment (and others) are petty. I told Mr. Lin that comments like these are a routine part of the transmittal process. He explained that he is extremely careful and deliberate when developing a design. We can rely on his judgement. Once again, I said that the Government also has a responsibility to exercise judgement.

7. He regrets the amount of time spent updating the construction schedule. This time is better spent working on the project. He believes that Government personnel should inspect progress more closely and vouch for his judgement and his rate of progress. Rejected schedules frustrate him. Schedule requirements are unnecessarily burdensome. Corps comments on the rejected schedules seem to add to the burden.
8. He rejects the idea that schedule milestones should be formalized in a modification and made a part of the contract. Formal milestones are not required by the original contract. Aptus has no desire to create new contract requirements now; especially when they are obviously intended to monitor his progress and could support adverse action.
9. The basic submittal register which is bound into the contract is the only register he feels bound to use. He rejects the idea that a more detailed submittal register should be prepared. He rejects the idea that numerous submittal actions should appear on the construction schedule. He rejects the idea that displaying required approvals might protect Aptus by clarifying requirements and preventing "surprises".
10. Mr. Lin corrected me by pointing out that the liquidated damages clause is currently unenforceable. L.D.'s are triggered by the final completion date. This date is unsettled because of late delivery of the SCADA system. (Mr. Lin is correct.)
11. Mr. Lin stated that it was a mistake to establish a separate completion date for the Governor and Exciter equipment. I asked whether he would be prepared to marry the SCADA equipment back into the contract and establish a single completion date. He seemed to think that the project should be unified, however, he is reluctant to discuss dates until he has touched the **SCADA** equipment.
12. Mr. Lin stated the belief that, because this is a retrofit, it is impossible to predict dates with much certainty. He does not want to commit to submittal dates very far in advance. He wants to work forward overcoming each obstacle in turn. He referred us to a copy of the basic contract submittal register showing his intentions for each submittal on the list which he provided two weeks ago. Of course the basic submittal list is so general and "generic" in nature, it has little value for scheduling.
13. Don and I attempted to pursuade Mr. Lin that detailed schedules and submittal predictions are routine parts of contract administration. Technical submittals and plans are commonly provided long in advance of the actual work. We also pointed out that certain submittals are sequenced by the contract.
14. Mr. Lin agreed that the QC Plan (revision) and that Environmental Protection Plan are overdue. He promised submittal in two days.

CONTRACTORS QUALITY CONTROL REPORT (CQR)
DAILY LOG OF CONSTRUCTION - MILITARY

QC NARRATIVE(S)

Were there any Delays in Work Progress today?

We investigated the state of components furnished for the assembly of governor servo motor position sensor and would like to share with you our grave concerns which will severly delay the completion of the project as follows:

1. As pointed out by my electro-mechanical engineer, Yuriy Dubinin, the design in Voith DWG 2631-0632 assumes item no. 10 will advance out of or retract into in tem no. 11 in such a way that the center lines of items no. 24, 10 & 11 will always stay aligned. However, as time goes by, item no. 26's will allow the plate (item no. 24) to rotate item no. 10 off the center lines of items no. 24 & 11. At this moment, if servo motor had a major movement, item no. 10 could crack the wall of item no. 11. Of course, when the plate (item no. 24) rotates, the sensor no longer reports the accurate position of the servo motor.

2. The diameter of the axial of the servo motor is roughly 3 11/16". But the diameter of the pivot clamp (item no. 21, Voith dwg. 2632-6267) is roughly 3.5". Right now, there is n ½" gap between the upper and the lower halves of the clamp.

3. The scale tube (item no. 10) is jammed inside the tube slide (item no. 11) at its first brackets. The welding of the mounting brackets near the midpoint to the tube slide causes the tube wall to shrink. Same problem occurs for Unit 3A's slide.

4. One of the transducers does not come with the transducer open magnetic ring. (Detail C, 2631-0632)

5. The size of the tap on the lower bracket (item no. 15) is much larger than that on top of the pivot clamp (item no. 21, 2632-6267). Item 15 can not be bolted on item 24.

6. Scale tube (item no. 10, 2632-6267) is roughly 1/64" larger than the opening of lower bracket (item 15). It can not be contained by items 15 & 16. Further more, the rounding of items 15 & 16 at the corners does not match scale tube's square corners.

7. No bolts are furnished or assigned an item no. on the drawing to clamp the upper and lower brackets (items 15, 16, 2632-6267) together.

8. Without wrapping the button (item 14, detail C, 2631-0632) in layers of teflon, the button will fall out of its hole.

9. Four holes on item no. 8 (2631-0656) are too small for mounting on the existing threads on Unit 3A's servo m.

10. Item 31 (2631-0656) needs one more nut to stand on the axial.

11. I can not find distributing valve transmitter identified as part no. 4050-24 on dwg. 2631-0656. It appears to be part no. 4050-561.

12. The holes on item no. 25 (2631-0656) do not line up with those on item no. 5.

13. Item no. 25 appears to be too weak to support its load above.

14. The wires coming out of the tail of the transducer (item no. 0890-555, 2631-0632) need to be terminated in a junction box. Voith should find a place on item no. 1 for its mounting. Voith also needs to furnish the cable to go from juction box to the governor control panel.

15. Distribuing valve transmitter (item 4050-24) needs a connector, a junction box, a place for its mounting, a continual cable to its control panel.

16. It's hard to imagine how item 31 (2631-0656) can perform any function by standing alone in the air.

17. Pin/axial from item 4050-24 (2631-0656) appears too weak to support item 31.

[End of App. 133]

Stan

1. Material for the Installation Contract mod follows.
2. After spending several hours with the set of detailed submittal notes prepared by Don Erfourth, I do not believe that the can be quickly inserted into a modification.
3. Instead, I recommend nine "milestones". The contractor is informed that the detailed submittal list associated with each "milestone" will be established by the Government and provided by letter. This gives us the flexibility to discuss the list with Mr. Lin and make adjustments.
4. The "functional" part of this mod is the list of milestone dates. We actually don't have to make the construction schedule a formal part of the contract. This option is also attached as an alternative version of the modification.

[End of App. 134]

25 FEB 00

CONVERSATION RECORD TIME 0900hrs DATE 7-Mar-00

TYPE: VISIT CONFERENCE TELEPHONE

LOCATION OF DISCUSSION: Voith Hydro and Aptus building at Voith Area Office

PERSON CONTACTED	ORGANIZATION	TELEPHONE NUMBER
Bill Eberman Phil Meier	Voith Hydro, Inc	(on site)

SUBJECT: Power Plant Automation Project

POSTING: T.P. 7B-3/5 S.: Q. P. J.P.

CF: Don Edwards, Steve Rose

NOTE: Mr. Eberman and Mr. Meier are Voith "erecting engineers". Voith sent two engineers to familiarize two individuals with our project. When one is tied up on other jobs, the other will be available to answer our requests for assistance. By prior agreement, the CoE will only pay for the presence of one engineer.

1. Voith Progress.

- They are identifying problems with the Voith inventory of parts. They took three or four small components to Bunker Manufacturing to be machined. Some additional fittings must be sent from Voith.
- They report that Mr. Lin has been helpful.
- Mr. Lin asked them for 3-20ma wire. They do not believe that Voith is required to provide it. I told them that Aptus is generally responsible for all wiring external to the equipment. We will have to confirm that this is true in the case of this control wiring.
- Some "missing" items are here. Aptus has difficulty locating certain parts among the crates.
- The contents of one Voith shipment can not be found. This shipment consisted of a pedestal and four meters. They have spoken with Steve Rose and will pursue the matter with Don in my absence.

2. Outages

- We arranged this visit to coincide with at least one outage (Unit 2).
- They will visit Bunker Manufacturing to arrange for someone to take dimensions during upcoming outages.

3. Impressions of the work.

- Very little permanent installation work is in place. They could not evaluate workmanship.
- They are concerned that the storage of governor components is unorganized. Parts for all generating units and all subassemblies are mixed. Tomorrow, they plan to recommend a parts system to Aptus. As a minimum, parts should be segregated by generating unit.

4. I asked them to identify key times when Voith would like to be present, What level of participation does Voith recommend to assure successful installation? I asked them for a recommendation. They will discuss the matter at Voith and respond.

NAME OF PERSON MAKING RECORD: Jim Peach SIGNATURE: J. Peach DATE: 7 March 2000

S.J. - 15 Mar..
J.P. ——

RE: Your Question (attached)

Stan:

1. I spoke to both of the Voith erecting engineers on Tuesday (7 Mar 00) after they had a chance to talk with Mr. Lin and view his work. I asked them specifically about their impressions of Aptus and the work done to date.
   - They had been on site a short time and their responses were guarded.
   - They said that Aptus failed to adequately organize and store the parts. This led Mr. Lin to mistakenly exaggerate the problems with the inventory of Voith parts. This is frustrating because it unfairly made Voith look bad.
   - They did not object to the workmanship on the small amount of installation work completed to date.
2. I returned from annual leave on Friday (10 March). Bill Eberman was gone.
   - Phil Meier had no additional specific complaints except that Mr. Lin wants to spend too much time discussing the governor layout. Mr. Meier points out that it is not Aptus job to redesign the governors. At one point, he told Mr. Lin to simply install the governors according to the Voith drawings.
   - I asked Phil Meier about a confrontation between Mr. Lin and Mr. Eberman that Don Erfourth told me about. Mr. Meier minimized it.
   - Mr. Meier observed that Aptus is inexperienced. However, he did not express urgent, specific problems or deficiencies to me.
4. I do not know why the erecting engineers were so much more clear and emphatic when they spoke to Don. Perhaps it is because I spoke to Phil Meier during my second conversation. His disposition is milder than Bill Eberman's.
5. Voith does want to be sure that their equipment is installed correctly. The Voith Project Engineer, Bob Baginski, telephoned to say the Voith is interested in helping any way they can. If we decide that we need any special services in connection with the installation (in addition to erecting engineers) they will happily give us a quote, etc.

14 MAR 00

You need to discuss this with Don & I first before we need him SL

Subject: Parts Inventory
Date: Wed, 22 Mar 2000 16:20:48 -0800
From: "Peach, James T LRE"
<James.T.Peach@lre02.usace.army.mil>
To: "S. Emanuel Lin" <aptus@30below.com>
CC: "Erfourth, Donald G LRE"
<Donald.G.Erfourth@lre02.usace.army.mil>,
"Rose, Steven S LRE"
<Steven.S.Rose@lre02.usace.army.mil>,
"Fedynsky, George LRE"
<George.Fedynsky@lre02.usace.army.mil>,
"Wong, David T LRE"
<David.T.Wong@lre02.usace.army.mil>,
"Godbey, Donald E LRE"
<Donald.E.Godbey@lre02.usace.army.mil>,
"Britz, Trudi A LRE"
<Trudi.A.Britz@lre02.usace.army.mil>

Mr. Lin:

1. Today, Phil Meier from Voith Hydro departed.

2. During his visit, he checked the inventory of governor parts at all five generating units. In some cases, he located parts that were believed to be missing. In other cases he made arrangements to provide missing parts and correct errors.

3. I have, at my desk, steel flanges for Unit 3A. These are replacements for the incorrect flanges delivered in the original shipment. I will make sure that they are brought out to unit 3A.

4. I have your note concerning the "fuse cubicle" for Unit 3A from ABB. Are you currently aware of any other deficiencies in the componets supplied by ABB?

- Jim Peach

635-3446

In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512 1800. When ordering the Circular from GPO, use the following stock number: 048000 00527 6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 31, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Service Division, Financial Management Service.

[FR Doc. 00 10000 Filed 4 20 00; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Chatham Reinsurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 19 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874 6779.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304 9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was listed as an acceptable surety on Federal bonds at 64 FR on page 35870, July 1, 1999.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

T.B. _____

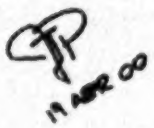
S.J. _____

J.P. _____

RE: Installation of Powerhouse Automation

Stan:

1. I asked Mr. Lin to explain the "kinematics problem". His response is attached.
2. As Mr. Lin says, the problem was brought to our attention on the daily report of 24 Feb. (it wasn't referred to as a "kinematics problem").
3. We gave a copy of that QC report to the Voith erecting engineers when they arrived (although, we don't routinely share Aptus reports).
4. We have asked Voith to write a brief account of their site visit. No response yet.



Peach, James T LRE

From: S. Emanuel Lin [aptus@30below.com]
Sent: Wednesday, April 19,2000 2:27 AM
To: Peach, James T LRE
Subject: Re: "Kinematics" Problem

Mr. Peach,

After brief review of the design from Voith drawing and the parts at the main power plant, Yuriy quickly felt the potential kinematics problem on the sliding tubes of the servo position assembly. It was reported to you in detail as item no. 1 in my daily construction report dated Thursday 24 Feb 00 and left on Karman's desk the following day. From the pile of papers, which included my previous day's daily report, on his desk, it looked like he was off that Friday. Since then, aptus had very little construction on site. We had focused on design and submittal. This past Saturday, I consulted in person with an expert on ground fault system design in Houston. I expect to report to you another potential problem he had raised in the meeting. That's what I have been working.

I did not know whether you fax that daily report to Voith. However, when Bill and Phill of Voith came on site, aptus courtesouly brought the kinematic problem to their attention. They agreed. We also showed them around on other problems. Because they are the designer, we refrained from stepping into that territary.

If you turn to Voith drawing no. 2631-0632, you'll see the inner tube (item 10) will be almost fully extended outside of its outer tube (item 11) as shown on the drawing. This is the situation when the gate is wide open during the normal operation of the generator. As you can see from the drawing, only a small section of inner tube resides inside the outer tube and there is appromiately 1/16" gap all around the inner and the outer tube. This "open end" is inssufficient to keep the inner tube in line with the outer

tube. This is like your file drawer, if it is not supported on a sliding rail that extends outward with your drawer, you will have difficulty in pushing the drawer back into the file cabinet after you had pulled it almost all the way out. Remember our old fashion wood desk? During a prolonged period of generator operation, the gate will go through lots of adjustment. It means the inner tube will be going through many ins and outs. There is no mechanism in the existing design to keep the inner tube in line with the center line of the outer tube after these movements or after someone unknowingly bumps the left end of the inner tube off the center with his rear or his tool or anything in the confined generator pit. This is because of the lack of "sliding rail" and the bushing permits the left end of the inner tube to rotate or to be bumped off center. If at this moment, the generator had an emergency shut down and the inner tube retracts into the outer tube quickly as the gate closes, the force of the movement will not be too kind to the outer tube. This is like slamming your file drawer to close when the end of the drawer that is close to you has been weighed down and out.

Emanuel Lin, 4/19/00, 2:24 a.m.

"Peach, James T LRE" wrote:

Mr. Lin:

1. You recently mentioned a "kinematics problem" in the Voith design. If I understand correctly, Aptus identified this problem and brought it to Voith's attention.

2. Please provide a brief description of the problem. I would like to understand its nature and importance.

3. Please respond with an Email "reply".

-Jim Peach
(906) 635-3446

Peach, James T LRE

From: rbaginski@voithyork.com
Sent: Wednesday, June 14,2000 11 :43 AM
To: Peach, James T; Shank, Rod J
CC: redeitz@voithyork.com; kachronister@voithyork.com; wpeberman@voithyork.com; pmeier2001@ aol.com
Subject: St. Marys-Installation QC Report Number 442, February 24, 2000 DACW35-99-C-0001 Voith Reference 71 531

Gentleman,

These items listed on the QCR have been review by Voith on several occasions in the past and are of a type that are commonly encountered when retrofittiing old equipment when detailed dimensional drawings of the existing equipment are not readily available. These type of problems do not stop the work since they are normally reconciled and corrected once identified. I believe that Voith has demonstrated extraordinary effort to reconcile, correct, and locate parts including extra site visits at our expense and that of the Corp to assist. The effort has resulted it the accumulation of considerable expense in the process to accomodate. With the assistance of the Corp, Voith has located a quality local manufacture (Bunker) and has utilized thier service to make all necessary modification. It is our opinion that it is not uncommon for an installation contractor to take the required remedial action, perform field modifications or adjustments as necessary if the action required is minor in nature as we have found. We believe several of trhe modifications could have been accomplished during the course of the installation in less time than it took to write the QCR and considerably less effort and expense than required by the Corp and Voith. We also have concerns regarding the installation contractor inventory parts system and control since parts could not be found by the Installation Contractor but found by Voith when our representatives were on site.

I have review the Contractors Quality Control Report (QCR) regarding parts supplied by Voith for Installation of Power Plant Automation at Sault Ste. Marie Michigan Voith offerers the following comments:

Item

1. Parts are at Bunker Machine for modification and can be made available on short notice. Report contains speculation regarding potential failure of the part.
2. Parts are at Bunker Machine for modification and can be made available on short notice.

3. Parts are at Bunker Machine for modification and can be made available on short notice.
4. Extra parts were shipped. Voith will take care of this item during assembly.
5. Parts are at Bunker Machine for modification and can be made available on short notice.
6. Parts are at Bunker Machine for modification and can be made available on short notice.
7. Purchased $0.14 part (bolt) at local hardware store which are currently in Voith possession.
8. Parts are at Bunker Machine for modification and can be made available on short notice.
9. Parts are at Bunker Machine for modification and can be made available on short notice.
10. Purchased $0.04 part (Nut) at local hardware store which is currently in Voith possession.
11. . . . at site and show part and its location to Installation Contractor representative.
12. Parts are at Bunker Machine for modification and can be made available on short notice.
13. Parts are at Bunker Machine for modification and can be made available on short notice.
14. Parts not a part of Voith supply. Should be supplied by Installation Contractor.
15. Parts not a part of Voith supply. Should be supplied by Installation Contractor.
16. Clearly the installation contractor does not understand the assembly drawing . . . the distributing valve spool position feedback transducer.
17. ... is OK.

Voith places a high value on working with the Corp and is eager to bring this project to an expedicious and successful conclusion. To bring about this conclusion Voith is willing to take the necessary steps including the responsibility for installation of our equipment on a time and material basis.

If you have any questions regarding the status listing of the QCR items listed please do not hesitate to contact us.

Regards,

Bob Baginski

CONTRACTORS QUALITY CONTROL REPORT (QCR)
DAILY LOG OF CONSTRUCTION - MILITARY

REPORT NUMBER 442 PAGE 1

DATE 24 Feb 00 -- Thursday

PROJECT
Installation of Power Plant Automatio, Sault Ste. Marie, Michigan

CONTRACT NUMBER
DACW35-99-C-0001

CONTRACTOR
Aptus Company

WEATHER
Temperature Min 40°F Max 45°F, No Precipitation

QC NARRATIVE(S)

Were there any Delays in Work Progress today?

We investigated the state of components furnished for the assembly of governor servo motor position sensor and would like to share with you our grave concerns which will severly delay the completion of the project as follows:

1. As pointed out by my electro-mechanical engineer, Yuriy Dubinin, the design in Voith DWG 2631-0632 assumes item no. 10 will advance out of or retract into item no. 11 in such as way that the center lines of items no. 24, 10 & 11 will always stay aligned. However, as time goes by, item no. 26's will allow the plate (item no. 24) to rotate item no. 10 off the center lines of items no. 24 & 11. At this moment, if servo motor had a major movement, item no. 10 could crack the wall of item no. 11. Of course, when the plate (item no. 24) rotates, the sensor no longer reports the accurate position of the servo motor.
2. The diameter of the axial of the servo motor is roughly 3 11/16". But the diameter of the pivot clamp (item no. 21, Voith dwg. 2632-6267) is roughly 3.5". Right now, there is a 1/2" gap between the upper and the lower halves of the clamp.
3. The scale tube (item no. 10) is jammed inside the tube slide (item no. 11) at its first brackets. The welding of the mounting brackets near the midpoint to the tube slide causes the tube wall to shrink. Same problem occurs for Unit 3A's slide.
4. One of the transducers does not come with the transducer open magnetic ring. (Detail C, 2631-0632)
5. The size of the top on the lower bracket (item no. 15) is much larger than that on top of the pivot clamp (item no. 21, 2632-6267). Item 15 can not be bolted on item 24.
6. Scale tube (item no. 10, 2632-6267) is roughly 1/64" larger than the opening of lower bracket (item 15). It can not be contained by items 15 & 16. Further more, the rounding of items 15 & 16 at the corners does not match scale tube's square corners.
7. No bolts are furnished or assigned an item no. on the drawing to clamp the upper and lower brackets (items 15, 16, 2632-6267) together.
8. Without wrapping the button (item 14, detail C, 2631-0632) in layers of taflon, the button will fall out of its hole.
9. Four holes on item no. 8 (2631-0656) are too small for mounting on the existing threads on Unit 3A's servo
10. Item 31 (2631-0656) needs one more nut to stand on the axial.
11. I can not find distributing valve transmitter identified as part no. 4050-24 on dwg. 2631-0656. It appears to be part no. 4050-561.
12. The holes on item no. 25 (2631-0656) do not line up with those on item no. 5.
13. Item no. 25 appears to be too weak to support its load above.
14. The wires coming out of the tail of the transducer (item no. 0890-555, 2631-0632) need to be terminated in a juction box. Voith should find a place on item no. 1 for its mounting. Voith also needs to furnish the cable to go from juction box to the governor control panel.
15. Distributing valve transmitter (item 4050-24) needs a connector, a junction box, a place for its mounting, a continual cable to its control panel.
16. It's hard to imagine how item 31 (2631-0656) can perform any function by standing alone in the air.
17. Pin/axial from item 4050-24 (2631-0656) appears too weak to support item 31.

PREP/INITIAL DATES (Preparatory and inital dates held and advance notice)

No preparatory or initial inspections were held today.

ACTIVITY START/FINISH

No activities were started or finished today.

QC REQUIREMENTS

No QC requirements were completed today.

QA/QC COMMENTS (Describe QC comments issued, report QA and QC comments corrected)

No QC comments were issued today.

Photocopy of Aptus QC Report

Peach, James T LRE

To: Rose, Steven
CC: Shank, Rod; Britz, Trudi
Subject: Governor Components Outages

Steve:

1. Aptus requests delivery of all governor components.

2. As you know, we planned that the speed disk parts would receive final machining during the first installation outage at each unit. (Since necessary dimensions must be taken during outages.)

3. I think that it is prudent to schedule a special outage at each unit so that the dimensions can be taken ahead of time. This way the speed disk components can be available "early".

4. As you know, your predecessor was reluctant to authorize outages unless absolutely necessary. However, Rod tells me that these outages could be very brief. Perhaps it is time to establish a new precedent!

5. Lets talk about this when you get caught up.

-Jim
(906) 635-3446

Peach, James T LRE

From: Rose, Steven S LRE
Sent: Monday, June 26, 2000 11:51 AM
To: Peach, James T LRE; Shank, Rod J NWP
CC: Britz, Trudi A LRE
Subject: RE: Delivery of Corrected Governor Components

Jim:

I'll answer a question with a question. Who "owns" the parts at Bunker, Voith or the government?
I recommend we get the parts if we have already accepted them. If Voith "owns" them, they should deliver them to us. Basically, I see no advantage of leaving them at Bunker if Bunker has truly completed the work.
My opinion ....
SS Rose

--Original Message-
From: Peach, James T LRE
Sent: 26 June 2000 10:37
To: Rose, Steven S LRE; Shank, Rod J NWP
Cc: Britz, Trudi A LRE
Subject: Delivery of Corrected Governor Components

Steve, Rod:

1. A number of small components were remachined at Bunker after the Voith erecting engineers visited the Soo. They are still there.
2. Phil Meier suggested that it might be wise to leave them at Bunker for now. They can be delivered when they are needed. This would simplify our burden of accounting for parts (and protecting them).
3. I am inclined to bring them down to the warehouse ASAP. Aptus continually refers to this parts as a reason for delay. The simplest way to quell this complaint is to have them available.
4. Opinions?

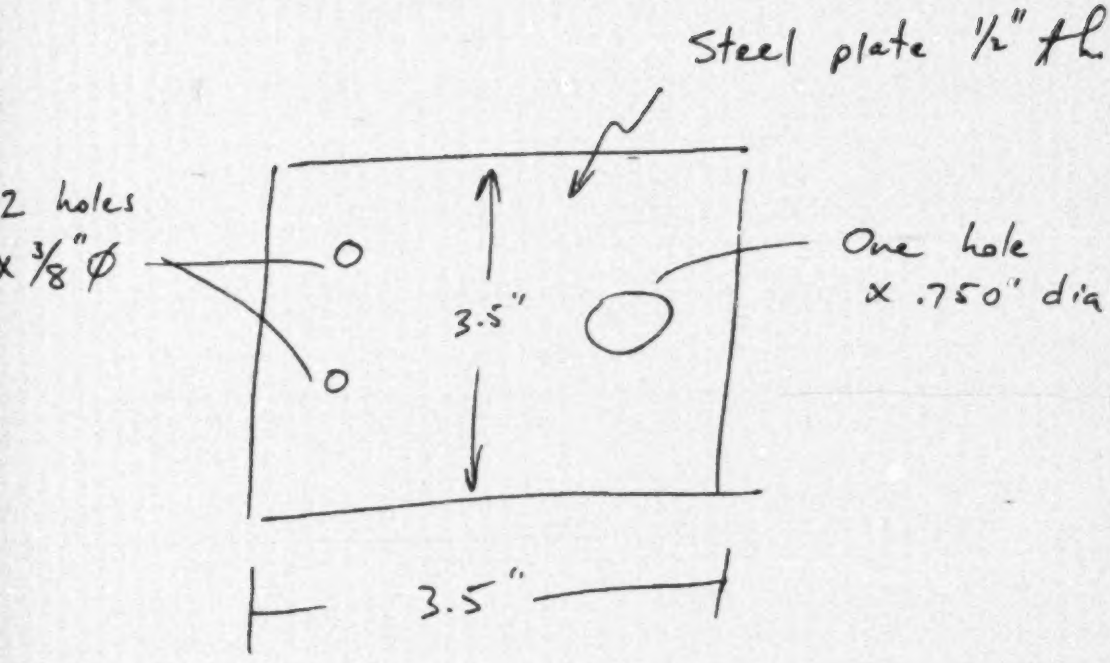
- Jim
(906) 635-3446

Peach, James T LRE

From: Shank, Rod J NWP
Sent: Monday, June 26, 2000 2:01 PM
To: Peach, James T LRE; Rose, Steven S LRE
Cc: Britz, Trudi A LRE
Subject: RE: Delivery of Corrected Governor Components

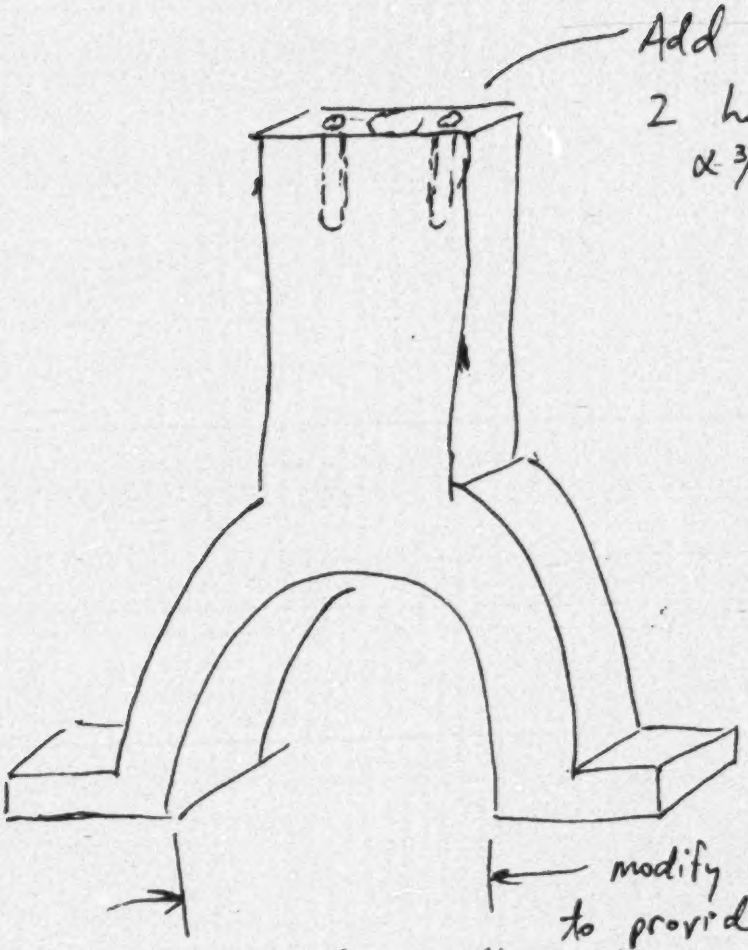
I agree we should probably get the parts in the possession of the Government as long as there is a paper trail as to what parts were received from Bunker

Rod



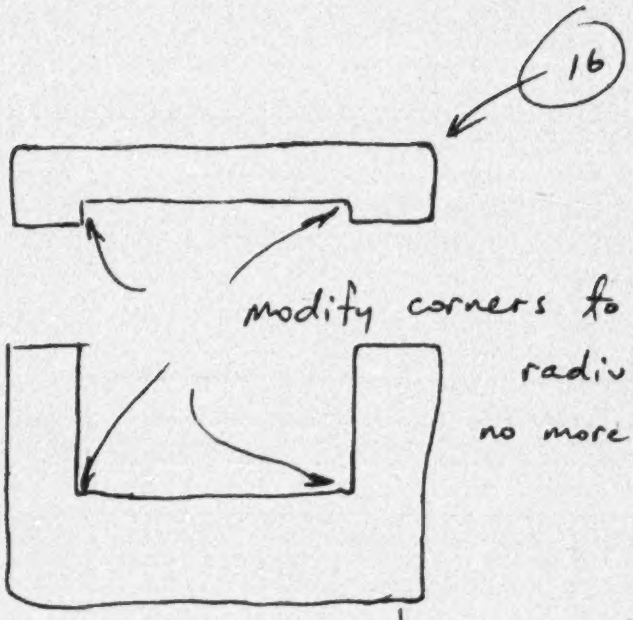
P.M.
15 SEP 03

#1
EXHIBIT
LB 9/15/03
DORK STENO SVCS



P.M.
15 SEP 03

#2
EXHIBIT
9/15/03
YORK STENO SVCS



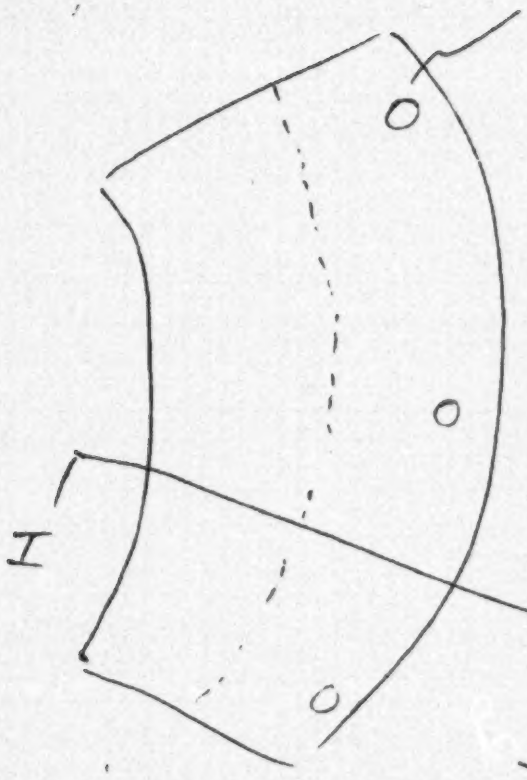
Ref: 2632-6267 Rev01

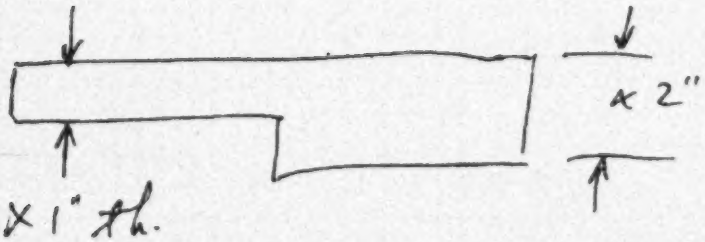
P.M.
15 SEP 03

#3
EXHIBIT
9/15/03
STENO SVCS

#5

EXHIBIT
JCB 9/15/03
STENO SVCS





section I - I

P.M.
15 SEP 03

PERFORMANCE BOND (See instructions on Page 2)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO EXPIRES 08/30/98
Bond No. 400530	November 5, 1998	9000 0045

reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MRV), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)
Shiche E. Lin dba Aptus Company 7527 Woodvalley Drive Houston, Texas 77025-4232	☒ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION

SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
Chubam Reassurance Company 8150 Brookriver Drive, Suite S303 Dallas, Texas 75247	1	265	110	0
	CONTRACT DATE		CONTRACT NO.	
	November 5, 1998		DACW35-99-C-0001	

OBLIGATION

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The Principal has entered into the contract identified above.

THEREFORE

The above obligation is void if the Principal -

(a) (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270d) which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

	Shiche E. Lin dba Aptus Company	PRINCIPAL		
Signature(s)	Shiche Emanuel Lin (Seal)	(Seal)	(Seal)	CORPORATE SEAL
Name(s) & Title(s) (Typed)	SHIMCHE EMANUEL LIN President			

INDIVIDUAL SURETY(IES)		
Signature(s)	1 (Seal)	2 (Seal)
Name(s) (Typed)	1	2

CORPORATE SURETY(IES)				
Name & Address	Chubam Reassurance Company 8150 Brookriver Drive, Suite S303, Dallas, Texas 75247		STATE OF INC.	LIABILITY LIMIT
Signature(s)	1	2		CORPORATE SEAL
Name(s) & Title(s) (Typed)	1 Thomas O. West Attorney-In-Fact	2		

CORPORATE SURETY(IES) (Continued)

SURETY B	Name & Address		STATE OF INC.	LIABILITY LIMIT $	CORPORATE SEAL
	Signature(s)	1	2		
	Name(s) & Title(s) (Typed)	1	2		
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT $	CORPORATE SEAL
	Signature(s)	1.	2		
	Name(s) & Title(s) (Typed)	1	2		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT $	CORPORATE SEAL
	Signature(s)	1	2		
	Name(s) & Title(s) (Typed)	1	2		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT $	CORPORATE SEAL
	Signature(s)	1	2.		
	Name(s) & Title(s) (Typed)	1	2		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT $	CORPORATE SEAL
	Signature(s)	1	2		
	Name(s) & Title(s) (Typed)	1	2		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT $	CORPORATE SEAL
	Signature(s)	1	2		
	Name(s) & Title(s) (Typed)	1	2		

THIS BOND IS APPROVED ON 12/5/90 ON BEHALF OF THE U.S. ARMY CORPS. OF ENGINEERS BY

BOND PREMIUM >	RATE PER THOUSAND	TOTAL
	$ 1.00M @ $3.5% Over @ 1.5%	$ 19,977.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Deviation from this form will require the written approval of the Standard Forms Control Point, General Services Administration.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal," and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

TENDER AGREEMENT

THIS AGREEMENT is made and entered into this __ day of September, 2000, by and between the Detroit District, U. S. Amy Corps of Engineers (hereinafter "the Corps"), and Chatham Reinsurance Corporation (hereinafter "Surety").

WITNESSETH

WHEREAS, the Corps (sometimes hereinafter referred to as the "Obligee"), on or about the 5th day of November, 1998, entered into that certain Contract No. DACW 35-09-C-0001 (hereinafter the "Contract") with Shihche E. Lin, d/b/a APTUS Company (hereinafter "APTUS Company") for the Powerhouse Automation Installation, Sault Ste. Marie, Michigan (the "Project"), said Contract being incorporated herein by reference as if set out verbatim; and

WHEREAS, the original contract price of $1,265,110.00 has been reduced, by written modification, to $1,225,110.00 (subject to a $40,000.00 increase for the optional hiring of skilled craftsmen); and

WHEREAS, in connection with the Contract, APTUS Company, as Principal, and the Surety made, executed and delivered to the Corps, as Obligee, a Performance Bond in the original penal sum of $1,265,110.00 and a Payment Bond in the original penal sum of $506,044.00, which Performance and Payment Bonds are incorporated herein by reference as if fully set out verbatim; and

WHEREAS, the Corps declared APTUS Company in default of its obligations under the Contract and terminated its right to proceed with the work as of the 26th day of June, 2000; and

WHEREAS, during the course of the work called for under the Contract, APTUS Company, having been paid $56,497.00 by the Corps through Pay Estimate No. 2, was terminated by the Corps pursuant to the terms of sad Contract, leaving unfinished certain work called for under the Contract and potentially leaving unpaid bills for labor, equipment services and/or materials furnished to APTUS Company in connection with the Project; and

WHEREAS, the Corps has warranted to Surety that its default termination of APTUS Company was made in accordance with the terms of the Contract; and

WHEREAS, the Corps has notified Surety of its default termi-

nation of APTUS Company and demanded that Surety satisfy its obligations under the Performance and Payment Bonds; and

WHEREAS, pursuant to the Corps' demands, and with a full and complete reservation of all of its and APTUS Company's rights, claims, remedies and defenses, Surety has chosen a method to fully satisfy the Corps' demands, pursuant to which Surety shall tender to the Corps a new contractor to assume APTUS Company's obligations to the Corps under the Contract for a completion price of $1,350,000.00 (plus $47,500.00 for the optional hiring of skilled craftsmen), and

WHEREAS, L & S Electric, Inc. of Schofield, Wisconsin, is ready, willing and able to assume APTUS Company's obligations to the Corps and has agreed to do so pursuant to the terms of an Agreement entered into between the Corps and L & S Electric, Inc., or even date herewith (hereinafter referred to as the "Completion Contract"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference as if set out verbatim;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the Corps and Surety have agreed and do hereby agree as follows:

1. The Surety hereby tenders to the Corps and the Corps hereby accepts L & S Electric, Inc. to complete the work as the Corps' prime contractor on the Project in accordance with the terms of the Completion Contract.

2. Subject to the terms of this Paragraph 2, the Surety shall pay to the Corps the sum of $188,887.00, the difference between the cost to complete the Contract (the Completion Contract price) and the balance remaining unpaid under the Contract. Said sum shall be paid by Surety to the Corps upon the execution of this Tender Agreement.

3. The Corps hereby fully and finally releases and forever discharges the Surety from and against any and all claims, demands, obligations and causes of action, of whatever nature, which the Corps had, has or may ever have against the Surety arising out of or in any way relating to APTUS Company's performance of or failure to timely and properly perform or complete the Contract, and any and all claims,

demands, obligations and causes of action which the Corps had, has or may ever have against the Surety's Performance Bond No. H00530 issued on behalf of APTUS Company in connection with the Project.

4. The Surety hereby agrees that its Payment Bond No. H00530 shall remain in full force and effect according to its terms, but only as it relates to claims for materials, equipment, services and/or labor supplied or furnished to APTUS Company by any third parties in connection with the Project prior to the date of this Tender Agreement; provided, however, that the Surety's obligation under said Payment bond shall in no event exceed and is hereby expressly limited to the expenditure of the penal sum of said Bond as set out above.

5. As partial consideration for the foregoing, the Corps hereby expressly assigns and transfers to Surety, and subrogates Surety to, all claims, demands, causes of action, rights and equities which the Corps had, has or may ever have against APTUS Company arising out of, in any way relating to or evidenced by its Contract with APTUS Company, and agrees that the Surety may pursue such claims, demands, causes of action, rights and equities as the Surety deems advisable.

6. Nothing in this Tender Agreement, nor in Surety's performance hereunder, shall prevent the Surety from enforcing any and all claims, rights or causes of action which Surety or its Principal, APTUS Company, may have against the Corps, including, without limitation, any claim of APTUS Company that it was or is entitled to an equitable adjustment or is owed additional compensation under the Contract, or any claim of APTUS Company that the Corps wrongfully terminated the Contract.

7. This Tender Agreement is binding upon the parties hereto and their respective successors and assigns provided, however, that no right of action shall accrue hereunder to or for the use or benefit of any person or entity other than the parties hereto, their respective successors or assigns.

8. This Tender Agreement represents the entire integrated

agreement between the parties hereto and supercedes all prior negotiations, representations or agreements, and may be amended only by written instrument executed by authorized representatives of both the Corps and Surety.

9. The parties hereto have voluntarily entered into this Tender Agreement based upon their independent investigation, without relying upon any representation of the other party or its agents, attorneys or representatives.
10. The provisions of this Tender Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the stated purpose and intent of the parties, but if for any reason any provision(s) hereof is/are held to be invalid or unenforceable, such provision(s) shall be deemed severed from this Tender Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed provision(s) had not been a part of this Agreement.
11. This Tender Agreement shall be governed by the laws of the United States of America and, to the extent necessary, by the laws of the State of Michigan.
12. This Tender Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

IT WITNESS WHEREOF the parties have executed this Tender Agreement as of the date and year first written above.

U. S. ARMY CORPS OF ENGINEERS
Detroit District

By GEORGE FEDYNSKY
Title Contracting Officer
Date 08 SEP 2000

CHATHAM REINSURANCE CORPORATION

By
Title Attorney
Date 9-8-00

BEST AVAILABLE COPY

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/con-tract subject matter where feasible.)

APTUS CO. is deleted from the contract due to a termination for default. Pursuant to a tender agreement with Chatham Reinsurance Corporation, L & S Electric, 5101 Mesker Street Schofield, Wi. 54476 is accepted as the Completion Contractor. L & S's proposal of 7 September 2000 is accepted and incorporated into the contract. The contract price is increased by $124,890.00, from $1,225,110.00 to $1,350,000.00. Option item 0016 is $47,500.00. Bonds are due by 19 September 2000.

Att
[illegible]

QUOTATION

To: Department of the Army
Detroit District,
Corps of Engineers
477 Michigan Avenue
Detroit, MI 48226

Quotation No.: E00274-RJH-083001
Prices firm for: 30 days
Date: September 07, 2000
Cage Code: 9S407
DUNS: 053088829
TIN: 39-1 077534

Attn: Mr. George Fedynsky

Subject: DACW35-98-B-0024
Powerhouse Automation Installation,
Sault Ste. Marie, Michigan

L&S Electric, Inc. is pleased to quote the following:

Item	Description	Unit	U/I	Ext.Amount
0001	Site Mobilization to Accomplish Work	1.00	JB	$ 50,000
0002	Site demobilization to remove equipment, cleanup and restore the site to original condition	1.00	JB	$ 15,000
0003	Engineering Design and Support	1.00	JB	$200,000
0004	Installation of the Excitation System for Units 1, 2 and 3	1.00	JB	$140,000
0005	Installation of the Excitation System for Unit 3A	1.00	JB	$ 40,000
0006	Installation of the Excitation System for Unit 10	1.00	JB	$ 60,000
0007	Installation of Units 1, 2 & 3Governor Retrofits	1.00	JB	$ 65,000
0008	Installation of Unit 3A Governor Retrofit	1.00	JB	$ 50,000
0009	Installation of Unit 10 Governor	1.00	JB	$ 60,000
0010	Installation of SCADA System	1.00	JB	$120,000
0011	Neutral Grounding System	1.00	JB	$175,000
0012	Unit 10 Switchboard	1.00	JB	$ 80,000
0013	Miscellaneous Switchboard Modification	1.00	JB	$ 80,000
0014	15 kV and Switchgear Modifications	1.00	JB	$150,000
0015	Spare Parts	1.00	LT	$ 50,000
0016	Skilled Craftsman Hire (Hours Est.) (Optional)	1,000.00	$47.50/HR	$ 47,500
0017	Parts and Materials (Not to Exceed $15,000)	1.00	JB	$ 15,000

Sub Total - $1,397,500
Less Item 0016 - ($47,500)
Contract Total - **$1,350,000**

Department of the Army.
E00247-RJH-083001
September 07, 2000
Page 2 of 2

This quotation is based upon the following clarifications:

Project Schedule
The completion date of the project is proposed to be October 19,2001. The completion date of October 19, 2001 is based upon receiving a contract no later than September 8, 2000. A formal project schedule will be submitted to the Government within 10 business days after receipt of a contract.

Liquidated Damages
Liquidated Damages will be based upon the proposed final completion date of October 19, 2001.

Existing Equipment
L&S Electric, Inc. will not be responsible for equipment that is already present at the job site, and is determined to be missing and/or damaged. A full inventory of parts and an assessment of their physical condition are to be performed by and between the government and L&S Electric prior to the commencement of on-site construction.

Existing Drawings
L&S Electric, Inc. will not be responsible for inaccuracies within existing drawings, which are either provided by equipment suppliers or the government. Installation of equipment and associated wiring will be performed based upon the drawings made available to L&S Electric, Inc. by the government.

Please feel free to contact me with any questions at 715.241.3420.

Sincerely,

L&S ELECTRIC, INC.

Ronald J. Hahn
Manager, Application Engineering
Engineering Division

AM-SM-MF

CONSTRUCTION CONTRACTOR EXPERIENCE DATA

IFB NO. DACW35-99-B-0024 — DATE (Day Month Year): 24/08/00

PROJECT: Powerplant Auto Installation, Sault Ste. Marie, MI

1. FIRM NAME: L&S Electric, Inc.

2. MAIN OFFICE ADDRESS (Street City State and Telephone): 5101 Mesker St. Schofield, WI 54476

3. BRANCH OFFICES: Mosinee, WI (2) - Sturtevant, WI - Menominee, MI - Appleton, WI - Duluth, MN Wisconsin Rapids, WI

4. ORGANIZATION: ☐ INDIVIDUAL ☐ JOINT VENTURE ☐ PARTNERSHIP ☒ CORPORATION

5. DATE ORGANIZED: 1933

6. DATE INCORPORATED AND STATE: 1966 - WI

7. NAMES OF OFFICERS AND OTHER KEY PERSONNEL: See Attached

I - PRESENT PAYROLL PERSONNEL (List Number of Each Category Below)

PARTNERS	OFFICERS	OTHER KEY	REMAINDER	TOTAL	SUBTOTAL PERMANENT	MAXIMUM PERSONNEL AT ANY TIME
	6		240	246		DATE 8/24/00

EQUIPMENT TO BE USED IN PERFORMANCE OF SUBJECT PROJECT: Computer systems and on-site construction equipment (subcontracted)

II - EQUIPMENT OWNED

PRESENT VALUE ($)	ACQUISITION COST ($)

III - FINANCIAL DATA AS OF (Date): See Attached

CURRENT ASSETS	CURRENT LIABILITIES	NET WORTH

IV ANNUAL RECEIPTS OF THIS CONCERN AND AFFILIATES FOR PRECEDING SIX YEARS (As Reported to IRS):

19	$26,621 M
19	$28,795 M
19	$31,899 M
19	$38,560 M
19	$41,802 M
19	$40,034 M

AVERAGE: $34,952 M

LARGEST JOB IN PAST SIX YEARS

CONTRACT AMOUNT	DATE
$2.6 M	98 - 99

DESCRIPTION: Turnkey project for Great Northern Paper in Maine. Design, Supply, Manufacture & Install SCADA system

OWNER: Great Northern Paper

V - LARGEST JOB EVER CONTRACTED (If Other Than in Past Six Years)

CONTRACT AMOUNT	DATE
$3.5 M	88 - 92

DESCRIPTION: Turnkey supply, design, manufacture testing, and installation of hydraulic governors, exciters, protection, switchgear and automatic controls.

OWNER: Edison Sault Electric Company

RECENT GOVERNMENT CONTRACTS PERFORMED

AGENCY	DATE	DESCRIPTION	AMOUNT
Bureau of Reclamation	2000 - 2002	Supply/Install Exciters	$1,999,782
Bureau of Reclamation	1993	Supply/Install Exciters	$350,000

TYPED NAME AND POSITION OR TITLE OF PERSON SIGNING: Ronald J. Hahn, Manager, Application Engineering

SIGNATURE:

NOTE 1: DATA OBTAINED FROM THIS PRE-AWARD SURVEY SHALL NOT BE RELEASED OUTSIDE OF THE GOVERNMENT

NOTE 2: USE REVERSE SIDE FOR REMARKS, EXPLANATIONS OR DETAILED DESCRIPTION OF ITEMS REPORTED ABOVE

NCE FORM 271
7 OCTOBER 1982

November 7, 2000

Mr. Stanley Jacek, P.E.
US Army Corps of Engineers -Detroit District
SOO Area Office, St. Mary's Falls Canal
Sault Ste. Marie, MI 49783

PROJECT: St. Mary's Falls Powerplant Automation Installation
L&S PROJECT NO.: M063920
CONTRACT NO.: DACW35-99-C-0001
REFERENCE: Drawing As-Builts Notice

Dear Mr. Jacek:

L&S has received and reviewed preliminary Pre-Con. Minutes and action items, and has given comments back to Jim Peach vie e-mail for incorporation. There are, however, some unresolved issues that may impact the project schedule and/or our quality of work.

While on site, L&S reviewed the available vendor and site drawings. We have observed that most of the drawings containing electrical wiring information for the plant were not up to date. The switchboard and protection relay drawings were missing, and the existing drawings were not correct (did not reflect the equipment that was currently installed). We would like to emphasize that L&S is not responsible for the updating of these drawings as part of our scope. In order for L&S to produce a correct set of interconnection diagrams, the drawings under the scope of this contract need to be revised to reflect the current status. We need the Corps to resolve this issue as soon as possible.

We have reviewed and accept the various listed action items as provided (preliminary) by Mr. Peach, however, we cannot proceed with our design until we receive equipment data and drawings for the SCADA system and the UPS. We are requesting these and the above listed materials as soon as possible, but no later than November 30,2000. Any delays in the supply of this information will cause delays on future submittals and/or the installation schedule.

If you should have any questions, or would like to discuss any of the above items in detail, please feel free to call me at (715) 241-3402 between 8:00 A.M. and 5:00 P.M. (CST).

Sincerely,
L&S ELECTRIC, INC.
Soroush Adib
Vice President of Engineering Division

CONVERSATION RECORD

TITLE

DATE 21-MAR-01

TYPE: VISIT | CONFERENCE | √ TELEPHONE

LOCATION OF VISIT/CONFERENCE

ROUTING

PERSON CONTACTED	ORGANIZATION	TELEPHONE NUMBER
Soroush Adib	L&S Electric	(715) 241-3402

SUBJECT
Installation of Powerhouse Automation; Construction Contract DACW35-99-0001

Soroush Adib called to discuss the contract status and schedule.

Major components of the ground fault relaying system (cabinets, etc.) have long lead times. Mr. Adib asks that these submittal reviews get first priority. Comprehensive responses to other L&S design submittals (including wiring, etc.) will take a while. However, a quick, limited response might be possible for these components. Approval would enable L&S to place orders and minimize delay.

Mr. Adib is preparing a letter for us.

- The transmittals currently under review constitute a fairly complete design package. More detail will be added, however, the Government reviewers will be able to understand the design from the materials currently in hand.
- The design contains many errors because L&S lacks detailed, reliable data. The Government has been unable to provide the data. L&S made reasonable assumptions about the missing data in order to keep the design moving. As a result, they will have to make corrections.
- The installation schedule will slip. The letter will provide further explanation.
- L&S design personnel are working on the RFP for digital drawings. Mr. Adib says that his designers have had a hard time estimating the scope and difficulty of the work. We will receive a proposal.
- L&S will recommend a face-to-face meetings at their facility. Mr. Adib would like his design staff to speak directly with our technical people. There will be questions related to ABB, Voith and SCIPAR equipment. The meeting would help everyone involved in the project to get a clear picture of the data needed to support design.

L&S underestimated the complexity resulting from incorrect drawings and multiple supply contracts. Other Corps Districts employing L&S refuse to release record drawings because they are known to contain errors. L&S is able to work because theses Districts issue basic contract drawing sets that are sufficient to support design. By contrast, Detroit is willing to release record drawings. However the record and contract drawings together are insufficient to support design because of errors and conflicts.

NAME OF PERSON MAKING RECORD: Jim Peach

SIGNATURE

DATE: 23 March, 2001

DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
BOX 1027
DETROIT, MICHIGAN 48231-1027

May 3, 2001

IN REPLY REFER TO:

Engineering and Technical Services

Mr. Brent Mahan
Director of the Hydroelectric Design Center
Portland District, Corps of Engineers
P. O. Box 2946
Portland, Oregon 97208-2946

Dear Mr. Mahan:

I am writing to apprise you of our powerhouse automation project in Sault Ste. Marie, Michigan. As you may know, our respective staffs have been working closely in support of the project. However, the project is experiencing significant delays due to our inability to satisfy contractor requests for information. We are simultaneously faced with multiple information requests from our installation and SCADA contractors.

Ms. Darilynne Allen, of your staff, is providing very valuable assistance and we are very appreciative of her efforts. However, this level of staffing can only support progress on one information requirement at a time. Accordingly, we are falling behind on our review and resolution of design and contract issues. Until we have the technical resources to work on multiple requirements, substantial delay and serious consequences to the contracting processes will result. Our installation contractor has already put us on notice of potential delay claim. Therefor additional HDC support is requested in the following areas:

a. Submittals - Fourteen technical transmittals are under review. Seven transmittal responses are overdue. We lack HDC comments on six of the seven.

b. Requests for Information - We have received one hundred, seventeen "action items" from the installation and SCADA contractors. We are preparing letters of response that should bring the

number of resolved action items to approximately eighty-five. HDC support has enabled us to make significant progress, however, new requests for information will continue to arrive. This volume will fully occupy Ms. Allen's schedule and prevent progress in other critical areas.

c. System Integration - In addition, a great deal of engineering time must be devoted to researching the automation systems in depth (SCADA, exciters, governors, etc.). Extended telephone conversations and meetings will be necessary to produce an integrated, fully operable system.

In Summary, the Detroit District is in desperate need of additional support from HDC. Accordingly, I am requesting HDC commit the additional resources necessary to satisfy the aforementioned requirements. Please contact me at (313) 226-6794 to discuss this matter further.

Sincerely,

David L. Dulong
Chief, Engineering and Technical Services

Copies Furnished:

CENWP-HDC (Jacobs)
CELRE-ET-SO (Jack)
CELRE-PM-PM (Schloop)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J	1 | 7

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
P00012	18-Jun-2001		Install Automation

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than item 6)	CODE
USA ENGINEER DISTRICT DETROIT CORPS OF ENGINEERS PO BOX 1027 DETROIT MI 48231-1027	W58ME502	See Item 6	

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)		9A. AMENDMENT OF SOLICITATION NO.
LAB ELECTRIC, INC 5101 MEMER ST SCHOFIELD WI 54476-0748		9B. DATED (SEE ITEM 11)
	X	10A. MOD. OF CONTRACT/ORDER NO. DACW58-98-C-0001
	X	10B. DATED (SEE ITEM 13) 03-Nov-1998

CODE 65407	FACILITY CODE 95407

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:
(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

☐ A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

☐ B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
Mutual Agreement

☐ D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
See continuing pages

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
JOROUSH ADIB, VP OF ENGINEERING	GEORGE FEDYNSKY / ADDED BY SUMI
15B. CONTRACTOR/OFFEROR: [signature] (Signature of person authorized to sign)	15C. DATE SIGNED: 6/20/01
16B. UNITED STATES OF AMERICA: BY [signature] (Signature of Contracting Officer)	16C. DATE SIGNED: 19-Jun-2001

10-105-04

EXCEPTION TO SF 30
APPROVED BY OIRM 11-84

STANDARD FORM 30 (Rev. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

SECTION SF 30 BLOCK 14 CONTINUATION PAGE
SUMMARY OF CHANGES

Changes in Solicitation/Contract/Order Form

The total cost has increased from $1,225,110.00 by $169,890.00 to $1,395,000.00

Changes in Section 00010

CLIN 0018 was added.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0018		1.00	Lump Sum	$124,890.00	$124,890.00

TAKEOVER INCREASE

FFP - Pursuant to tender agreement with Chatham Reinsurance Company. See Modification P00011.

NET AMT $124,890.00

CLIN 0019 was added.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0019		1.00	Lump Sum	$45,000.00	$45,000.00

Site Investigation and Record Drawing

FFP

NET AMT $45,000.00

Changes in Section SF 30

CLARIFICATION

1. The last modification to this contract is P0001 1, dated 08 Sep 2000. With that modification the U.S. Army Corps of Engineers accepted L & S Electric as the completion contractor.

This contract has a continuing contracts clause. For administrative ease the contract is input into CEFMS in two ways: Aptus contract no. DACW35-99-C-0011 and E & L Electric contract no: DACW35-99-C-0001 with the designator CMPL. $56,497.00 is obligated under the Aptus Contract in CEFMS. The contract price with E & L is $1,350,000.00. This modification will increase the contract price to $1,395,000. Note, to date $500,000.00 has been allocated on E & L Electric's contract.

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE
(Read instructions on the reverse side prior to initiating this form)

DATE: 3/16/01

TRANSMITTAL NO.: 19.0

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)*

TO	FROM	CONTRACT NO.	CHECK ONE
US ARMY CORPS OF ENGINEERS DETROIT DISTRICT	L&S ELECTRIC, INC ENGINEERING DIVISION	DACW35-99-C-0001	☒ THIS IS A NEW TRANSMITTAL ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL ____

ITEM NO. (a)	DESCRIPTION OF ITEM SUBMITTED (Type, size, model number/etc.) (b)	MFG. OR CONTR. CAT., CURVE, DRAWING OR BROCHURE NO. (See instruction no. 8) (c)	NO. OF COPIES (d)	CONTRACT REFERENCE DOCUMENT: SPEC. PARA. NO. (e)	CONTRACT REFERENCE DOCUMENT: DRAWING SHEET NO. (f)	FOR CONTRACTOR USE CODE (g)	VARIATION (See instruction No. 6) (h)	FOR G.E. USE CODE (i)
	DWG: INSTRUMENT XFMR CABINET, ASSY	D15256	5	16930-1.3.1	1			C
	DWG: " " " 3-LINE	D15246	5		1			C
	MFR DATA: ABB, CT 500/5A	KIR-60	5		1-2			C
	" " ABB, VT 4200/120V	VIZ-75	5		1-2			C
	" " ABB, FLEXITEST SWITCH	FT-1	5		1-4			C
	" " GE, TERMINAL BLOCK	EB27B125K	5		1			C
	ITC BILL OF MATERIALS	D15247	5		1			C

RECEIVED
MAR 20 2001
S&O FIELD OFFICE

REMARKS

SEE ATTACHED COMMENTS

I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other wise stated.

SOROUSH ADIB

DATE AND SIGNATURE OF CONTRACTOR 3/16/01

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED (List by Item No.)	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE
	Stanley R. Jacek STANLEY R. JACEK, P.E.	9 Jan 02

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE
(Read instructions on the reverse side prior to initiating this form)

DATE: 4/26/01

TRANSMITTAL NO: 20.0

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)*

TO	FROM	CONTRACT NO	CHECK ONE
US ARMY CORPS OF ENGINEERS DETROIT DISTRICT	L&S ELECTRIC, INC ENGINEERING DIVISION	DACW35-99-C-0001	☒ THIS IS A NEW TRANSMITTAL ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL _____

ITEM NO a	DESCRIPTION OF ITEM SUBMITTED (Type, size, model number, etc.) b	MFG. OR CONTR. CAT. CURVE DRAWING OR BROCHURE NO (See instruction no. 8) c	NO OF COPIES d	CONTRACT REFERENCE DOCUMENT SPEC PARA NO e	CONTRACT REFERENCE DOCUMENT DRAWING SHEET NO f	FOR CONTRACTOR USE CODE g	VARIATION (See instruction no. 6) h	FOR C/E USE CODE i
	UNIT DATA: RTS ANNUNCIATION PANEL		5	16250-131		A		C
	DWG: U#10 SWBD ASSY	DLS597	5		1	A		C
	DWG: U#10 SWBD ASSY	DLS597	5		2	A		C
	DWG: U#10 SWBD ASSY	DLS597	5		3	A		C
	UNIT 10 SWBD BILL OF MATERIALS	BOM	5			A		C
	MFR DATA: UNIT 10 SWBD COMPONENTS		5	↓		A		C

REMARKS

I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as otherwise stated

SOROUSH ADIB

NAME AND SIGNATURE OF CONTRACTOR

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED (List by item No.)	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE

ADDED REQUIREMENT

The contract is modified to provide interim payment (part I) to the Contractor pending final negotiation of costs for digitizing and upgrading selected New Power Plant record drawings.

It is understood and agreed that, when this change is definitized, the Government will issue a second modification (part II) to increase the amount of contract line item 0018 to cover the entire cost of the change. The final cost (sum of parts I and II) of this work shall not exceed $70,000.00.

Definitization shall be accomplished by mutual agreement between Government and L&S Electric during execution of part I of the change. They will compile a list of drawings to the upgraded, agree on the desired level of detail and reach agreement on the amount of effort required for site investigation and execution of the drawings. Negotiated costs will be consistent with the price schedule offered by L&S Electric in the proposal dated May 7, 2001. The Engineering Services Rate Schedule is as amended on June 15, 2001.

By mutual agreement, L&S Electric shall furnish all plant, equipment and materials and perform all work necessary to accomplish the following:

(1) CHANGES TO THE SPECIFICATIONS

A. Refer to contract section 00010 entitled "SUPPLIES OR SERVICES AND PRICES/COSTS".

Add contract line item 0019 as follows.

Item	0019
Description	Provide record Drawings
Quantity	1
U/I	Lump Sum
Unit Price	$45,000.00
Amount	$45,000.00

2.1 RECORD DRAWINGS

2.1.1 Scope

The contractor shall convert selected drawings from the New Power Plant Record Drawing set to a vectorized format compatible with

Soo Area Office software. The contractor shall update the drawings to show true conditions as described by paragraph 2.1.3.

The record drawings required by this section are in addition to the (original) as-built drawing requirement stated elsewhere in the contract. The original as-built drawing requirement remains in full force and effect.

2.1.2 Included Drawings

The following New Power Plant record drawings are included in this requirement.

<The list of drawings shall be compiled by mutual agreement between the Contractor and the Government during execution of part I of this change. The list will appear in part II of this change.>

2.1.3 Representation of True Conditions

Record drawings prepared by the contractor shall show the true condition of pre-existing and newly installed equipment and appurtenances to the extent and with the level of detail agreed during execution of phase I of this change.

2.1.4 Site Survey

The contractor shall conduct a comprehensive site survey by a qualified engineer or technician. Soo Area Office personnel shall provide access to equipment and to such drawings as are available in order to facilitate the work. The Government shall arrange a brief generator outage (approximately 8 hours) at each generating unit to facilitate the site inspection.

2.1.5 Site Survey Safety and Security

The site surveyor shall be subject to the same safety and security requirements established for installation crews. Pay particular attention to contract section 01100 and to the Safety and Health Requirements Manual (EM385-1-1).

- The contractor shall provide a letter stating that law enforcement officials (typically, the local sheriffs office) attest that there are no outstanding warrants against the site surveyor.
- The contractor shall submit a digital photo of the surveyor or a standard photo that can be cropped to one inch by two inch size. The photo will be mounted on a security badge.
- If the site surveyor is working alone, he shall remain on flat ...

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J	1 | 4

2. AMENDMENT MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO (If applicable)
P00018	18-Sep-2001		Install Automation

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than item 6)	CODE
USA ENGINEER DISTRICT-DETROIT CORPS OF ENGINEERS PO BOX 1027 DETROIT MI 48231-1027	W56MES02	See Item 6	

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)		
L&B ELECTRIC, INC SOROUSH ADIB PO BOX 749 SCHOFIELD WI 54476-0749		9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	X	10A. MOD. OF CONTRACT/ORDER NO. DACW35-99-C-0001
	X	10B. DATED (SEE ITEM 13) 02-Nov-1998
CODE 9S407	FACILITY CODE 9S407	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as extended by one of the following methods:
(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
Mutual Agreement

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
SEE FOLLOWING PAGES ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
SOROUSH ADIB, VP of Engineering Dev.	GEORGE FEDYNSKY / ADDED BY SUMI	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)	9/19/01	BY (Signature of Contracting Officer)	18-Sep-2001

EXCEPTION TO SF 30
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

SECTION SF 30 BLOCK 14 CONTINUATION PAGE
SUMMARY OF CHANGES

Changes in Solicitation/Contract/Order Form

The total cost has increased from $1,408,905.00 by $25,000.00 to $1,433,905.00

Changes in Section 00010

CLIN 0019

The total CLIN cost has increased from $45,000.00 by $25,000.00 to $70,000.00

The unit price amount has increased from $45,000.00 by $25,000.00 to $70,000.00

Changes in Section SF 30

The contract is modified to include a list of Government record drawings to be digitized and upgraded by the Contractor. This modification is the second part (part II) of the two part action initiated with modification P00012 (part I). The list of drawings was compiled in fulfillment of modification P00012 and is hereby incorporated into the contract.

The value of (lump sum)contract line item 0019 is INCREASED by $25,000.00 from $45,000.00, as established by modification P00012, to $70,000.00.

CHANGES TO THE CONTRACT SPECIFICTIONS

(1) Refer to contract paragraph 01100-2.1.2. Replace the note between the parentheses "<>" with the following drawing list.

DC-179-35	DC-93-36
DC-179-36	DC-93-37
DC-179-37	DC-93-40
DC-93-10	DC-98-7
DC-93-14	SMR-PH-I-56/52/1
DC-93-29	SMR-PH-I-56/10/1

(2) Refer to Contract Section 00010 entitled "SUPPLIES OR SERVICES AND PRICESICOSTS".

Change the amount of contract line item 0019 from $45,000.00 to $70,000.00.

Variances U.S. Army Corps of Engineers

-- St. Marys Falls Hydro Plant Unit 10 Switchboard Panel

No.	Variance	Justification
1	Specification stated to re-use the existing RTD-Monitor panel. We are replacing this 4-slot panel with a 10-slot panel. There will be a price increase involved in this change.	The existing 4 slot panel does not have space to expand to all the future points defined. The next size larger is a 10-slot panel.
2	Specification stated to re-use the existing 51, 59, & 87 protective relays. We are replacing these relays with a Schweitzer SEL300G generator protection relay. There will be a price increase involved in this change.	The existing relays are obsolete and not in the best condition. The programmable multi-function relay contains all these protection features plus others that may be considered in the future.
3	We are proposing to use Potter Brumfield 2-pole plug-in relays with permanent magnet blow-outs on the contacts in place of the General Electric type HFA .	The General Electric Relays as specified require a lot of front panel space and have an inferior contact rating (GE = 1.5 amp make & break/12 amp continuous, PB = 5 amp make & Break/ 10 amp continuous)
4	The specification defines solderless ring terminals on all wires smaller than #6 awg. We propose to adhere to this standard on all instrument transformer circuits. On all others we plan to use terminals accepting bare wires.	Terminal blocks that accept ring terminals require roughly twice the panel space than terminal blocks accepting bare wires. Also, most of the equipment used in the panel have bare wire type terminals.
5	We are proposing to use Allen-Bradley 30mm industrial switches in place of switchboard type switches.	The additional space required for the switchboard type switches would place some of the switches at too low a height on the panel.
6	We are proposing to have only three 125Vdc circuit spares in unit 10 switch board.	The fourth spare is going to be use for the brake solenoid power.
7	We are proposing to use GE white incandescent indicating lights instead of white LEDs.	125Vdc white LEDs to fit this application could not be found.

INSPECTORS QUALITY ASSURANCE REPORT (QAR)
DAILY LOG OF CONSTRUCTION - CIVIL
(ER 1180-1-6)

THE QCR WILL BE ATTACHED TO OR FILED WITH THE QAR

REPORT NUMBER: 571 — Page 1 of 1

TO:

DATE: 08 Apr 2002 - Monday

PROJECT: Installation of Power House Automation,Government Hydropower Plant (Soo)

CONTRACT NUMBER: DACW35-99-C-0001 NA

CONTRACTOR (Or Lead Labor): L&S Electric, Incorporated

WEATHER: Weather Caused No Delay

PORTION OF SCHEDULED DAY SUITABLE FOR OPERATIONS

STRUCTURAL EXCAVATION	BORROW EXCAVATION	EMBANKMENT	CONCRETE	STRUCTURE
0 %	0 %	0 %	0 %	100 %

TEMPERATURE

MINIMUM	MAXIMUM
20 °F	30 °F

HAS ANYTHING DEVELOPED ON THE WORK WHICH MIGHT LEAD TO A CHANGE ORDER OR FINDING OF FACT? ☒ NO ☐ YES (Explain)

24 HOUR PRECIPITATION

INCHES	ENDING
0.00	

NUMBER OF GOVERNMENT EMPLOYEES

SUPERVISORY	OFFICE	LAYOUT	INSPECTION	TOTAL	LABOR
3	0	0	1	4	0

RIVER STAGE

FEET	TIME
0.0	

NUMBER OF CONTRACTOR'S EMPLOYEES

SUPERVISORY	SKILLED	LABORERS	TOTAL
2	1	0	3

NUMBER OF SHIFTS ☒ 1 ☐ 2 ☐ 3

FROM	TO	FROM	TO	FROM	TO
0630 M	1500 M	M	M	M	M

Attach list of the following: (a) Major items of equipment either idle or working, and (b) Number and classification of contractor personnel on site.
Note: If the contractor's Quality Control Report (QCR) contains the information it need not be repeated.

QA NARRATIVE(S)

Information, Instructions or Actions Not Covered in QCR:

Alan Spencer THIS IS THE K'S FIRST DAY ON SITE. WE HELD THE CO-ORDINATION MEETING THIS MORNING. THE K HAD THREE PEOPLE THERE AND THE CORPS HAD TEN. NAMES WOULD BE LISTED IN THE MEETING MINUTES. AFTER THE MEETING THE K WALKED THE SITE TO GET FAMILIAR WITH THE WORK AREA.

Miscellaneous Remarks and Visitors to Project:

Alan Spencer K IS DOING MOB AND GETTING USED TO THE SITE THIS DATE

QUALITY ASSURANCE	DATE	SUPERINTENDENT	DATE
Al Spencer	04-12-02	JTP	4-12-02

ENG FORM 4638-2, May 94 (CIVIL) — This form together with ENG Form 2538-1, Aug 92, is to be used in lieu of this version, ENG Form 2538, Dec 87, however all obsolete. (Proponent CEMP-CE)

MAY 10 '02 12:21PM L&S ELECTRIC CHI DIV 715 3555948 SAU AREA OFFICE DAVIS BL → USACE @003 P.2/5

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J	1 | 4

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO (If applicable)
P00022	01-May-2002		Install Automation

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE
USA ENGINEER DISTRICT-DETROIT CORPS OF ENGINEERS PO BOX 1027 DETROIT MI 48231-1027	W68ME5	See Item 6	

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)	9A. AMENDMENT OF SOLICITATION NO.
L&S ELECTRIC, INC SCHOOLER ADM PO BOX 749 SCHOFIELD WI 54476-0749	9B. DATED (SEE ITEM 11)
	X 10A. MOD. OF CONTRACT/ORDER NO. DACW68-96-C-0001
CODE 98407 FACILITY CODE 98407	X 10B. DATED (SEE ITEM 13) 02-Nov-1999

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning ____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Mutual Agreement

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See attached pages ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
Donald Adix VP of Engineering	GEORGE PRZYBYSKY / ADDED BY SUBS
15B. CONTRACTOR/OFFEROR	16B. UNITED STATES OF AMERICA
(Signature of person authorized to sign)	BY (Signature of Contracting Officer)
15C. DATE SIGNED 5-10-02	16C. DATE SIGNED 02-May-2002

EXCEPTION TO SF 30
APPROVED BY OMB 11 84

30-105-04

STANDARD FORM 30 (Rev. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

SECTION SF 30 BLOCK 14 CONTINUATION PAGE
SUMMARY OF CHANGES

Changes in Solicitation/Contract/Order Form

The total cost has increased from $1,517,177.00 by $224,903.25 to $1,742,080.25

Changes in Section 00010

CLIN 0021 was added.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0021		1.00	Lump Sum	$224,903.25	$224,903.25
	Re-establish Completion Date				
	FFP		NET AMT		$224,903.25

Changes in Section SF 30

It has been determined that, in view of the necessity of re-establishing a firm contract completion date, it is in the best interest of the Government to modify this contract as follows:

CHANGES TO THE CONTRACT PROVISIONS:

Refer to contract clause 00800-1 entitled "Commencement, Prosecution and Completion of Work (APR 1984)". REPLACE the entire clause with the following:

"The Contractor shall prosecute the work diligently and install all equipment ready for use no later than September 30,2002. Documentation, site clean-up and other activities unnecessary for operation of the installed equipment will reach completion no later than April 15, 2003."

This modification serves as acceptance of the Contractor's proposal dated March 22, 2002 as revised on 29 April 2002 by negotiation.

It is understood and agreed that, pursuant to the above, time for completion of all work is EXTENDED to the dates shown in the revised contract clause 00800-1 displayed above and the estimated total amount of the contract is INCREASED by $224,903.25 from $1,517,177.00, as established by modification P00021, to $1,742,080.25.

It is further understood and agreed that this modification constitutes payment in full on behalf of the Contractor and its subcontractors and suppliers for all costs and markups directly or indirectly attributable to the changes ordered herein, for all delays related thereto, and for performance of the changes within the time stated.

1.5 GOVERNMENT-FURNISHED PROPERTY

1.5.1 IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY

Pursuant to Clause 52.245-3, Identification of Government-Furnished Property, SECTION 0700, CONTRACT CLAUSES, the following government furnished property are identified.

Item	Description	Quantity
1	Excitation Systems	5
2	Digital Governor and Pumping Unit (Unit 10)	1
3	Digital Governor Conversion and Pumping Unit (Unit 3A)	1
4	Digital Governor Conversion (Units 1-3)	3

5	SCADA System including 4-RTU's and 3-Master Stations	1

Government furnished property is being procured under separate contracts and will be available no earlier than as follows: GOVERNOR Equipment (October 1998), EXCITATION Equipment (January 1999), SCADA System (July 1999).

1.6.2 Over-water Transport

Upon 72 hours prior arrangement with the Soo Area Engineer's Office, the Government will transport the Contractor's materials and equipment between the designated storage and unloading areas to accommodate the Contractor's construction operations. The Contractor may provide its own over-water transport at no additional cost to the Government. Government transportation is only available during normal work hours of 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. Over-water transport by the Government is available only between 1 May and 30 November. If the Contractor provides its own over-water transportation, the Contractor shall coordinate its work operations with lock operation and navigation traffic. The Government has ultimate control of all vessel movement. The Contractor shall abide by all directives and orders issued by the Government regarding keeping shipping lanes open and useable. To the extent practicable, the Government will route vessel traffic through available locks in a manner that will minimize impacts on the Contractor's operations. Never-the-less there will be periods when the Contractor must vacate a shipping lane until a vessel or vessels have cleared the area. A detailed procedure shall be established between the Contractor and the Lockmaster's office for providing warning of approaching vessels and lock operations and for confirming that shipping lanes are clear before vessel passage takes place.

MATERIAL INSPECTION AND RECEIVING REPORT

Form Approved OMB No. 0704-0248

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
SEND THIS FORM IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED IN THE DFARS, APPENDIX F-401.

1. PROC. INSTRUMENT IDENT. (CONTRACT)	ORDER NO.	6. INVOICE NO./DATE	7. PAGE	OF	8. ACCEPTANCE POINT
DACW35-99-C-0001					NPP - Soo Area Ofc

2. SHIPPED AT/ON	3. DATE SHIPPED	4. B/L TCN	5. DISCOUNT TERMS

9. PAYEE/CONTRACTOR (CODE)	10. ADMINISTERED BY (CODE)
L&S Electric, Incorporated P.O. Box 740 Schofield, Wisconsin 54476-0740	Soo Area Office; USAED-Detroit St. Marys Falls Canal Sault Ste Marie, Michigan 49783
11. SHIPPED FROM (If other than 9) (CODE) FOB	**12. PAYMENT WILL BE MADE BY** (CODE)
13. SHIPPED TO (CODE)	**14. MARKED FOR** (CODE)

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION *(Indicate number of shipping containers - type of container - container number.)*	17. QUANTITY SHIPPED/*	18. UNIT	19. UNIT PRICE	20. AMOUNT
1	Unit 1 RTU Cabinet	1	ea		0.00
2	Unit 2 RTU Cabinet	1	ea		0.00
3	Unit 3 RTU Cabinet	1	ea		0.00
4	Unit 3A RTU Cabinet	1	ea		0.00
5	Station Service RTU Cabinet	1	ea		0.00
6	Synchronizer Cabinet	1	ea		0.00
7	External Bypass Switch (BPE 01 MBB-1A)	1	ea		0.00
8	Breaker Panel (16 branch breakers)	1	ea		0.00
9	Electroswitch (24302B)	1	ea		0.00
10	Electroswitch (74202B)	5	ea		0.00
11	Electroswitch (74201B)	1	ea		0.00
12	Electroswitch (24201B)	5	ea		0.00

21. CONTRACT QUALITY ASSURANCE

A. ORIGIN	B. DESTINATION
☐ COA ☐ ACCEPTANCE of listed items Has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents	☐ COA ☐ ACCEPTANCE of listed items Has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.
DATE	DATE
TYPED NAME AND OFFICE	TYPED NAME AND OFFICE

22. RECEIVER'S USE

Quantities shown in column 17 were received in apparent good condition except as noted.

5/7/02 James T. Peach

DATE RECEIVED — SIGNATURE OF AUTHORIZED GOVT REP

TYPED NAME AND OFFICE: James T. Peach, P.E.
Ch, Construction Branch
Soo Area Office

* If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark. If different, enter actual quantity received below quantity shipped and explain.

23. CONTRACTOR USE ONLY

"I certify that I have accepted the articles in quantity shipped/received column, except as noted, for use on contract number DACW35 99 C 0001"

Matt Hermsen QC — 5-16-02

Matt Hermsen, L&S Electric, Incorporated — Date

DD Form 250, NOV 92 — Previous edition may be used

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE

(Read instructions on the reverse side prior to initiating this form)

DATE: 3-8-02

TRANSMITTAL NO.: 19.1

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS (This section will be initiated by the contractor)

TO:	FROM:	CONTRACT NO.	CHECK ONE:
US ARMY CORPS OF ENGINEERS DETROIT DISTRICT	L&S ELECTRIC, INC ENGINEERING DIVISION	DACW35-99-C-0001	☐ THIS IS A NEW TRANSMITTAL ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL ____

ITEM NO. (a)	DESCRIPTION OF ITEM SUBMITTED (Type, size, model number, etc.) (b)	MFG. OR CONTR. CAT., CURVE, CODE OR BROCHURE NO. (If any) (c)	NO. OF COPIES (d)	CONTRACT REFERENCE: SPEC. PARA. NO. (e)	CONTRACT REFERENCE: DRAWING (f)	CONTRACTOR USE CODE (g)	VARIATION (If any) (h)	FOR GOVT. USE (i)
1	Bill of Materials (Part List)	PL000160	1		1-5			A
2	MFR DATA		1		1-47		✓	A
3	ASSEMBLY DRAWINGS	D15599	1		1-8			B
4	INSTALLATION PROCEDURES/INSTRUCTIONS		1		1-6			A

COPY

REMARKS

2) Saginaw enclosure SCE-30260BLP is constructed of .075" carbon steel which does not meet spec. The industry standard for an enclosure this size is .075".

20 MAR 02

I certify that the above submittal items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as otherwise noted.

Anthony Topy 3-20-02

NAME AND SIGNATURE OF CERTIFICATION — DATE

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED (List by Item No.)

NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY

CONTRACTING OFFICER'S REPR.

DATE: 20 MAR 02

MAR 20 2002 12:08 FAX 906 635 3459 L&S ELECTRIC ENG DIV 715 2555548 SOO AREA OFFICE DAVIS BL P.001 4/002

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE
(Read instructions on the reverse side prior to initiating this form)

DATE: 3/22/02

TRANSMITTAL NO.: 20.1

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)*

TO: US ARMY CORPS OF ENGINEERS
DETROIT DISTRICT

FROM: L&S ELECTRIC, INC
ENGINEERING DIVISION

CONTRACT NO.: DACW35-99-C-0001

CHECK ONE:
- ☐ THIS IS A NEW TRANSMITTAL
- ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL 20

ITEM NO (a)	DESCRIPTION OF ITEM SUBMITTED (Type, size, model number, etc.) (b)	MFG. OR CONTR. CAT. CURVE DRAWING OR BROCHURE NO. (See instruction no. 8) (c)	NO OF COPIES (d)	CONTRACT REFERENCE DOCUMENT: SPEC PARA. NO. (e)	CONTRACT REFERENCE DOCUMENT: DRAWING SHEET NO. (f)	FOR CONTRACTOR USE CODE (g)	VARIATION (See instruction no. 6) (h)	FOR G.E. USE CODE (i)
1	PART LIST BOM.	PL000206		16050-1.31	1-7			B
2	Unit 10 Switchboard Assemblies	D15597		"	1-7		✓	B
3	Unit 10 Switchboard Elementaries	D15585		"	1-14			B
4	Metering + Relay Three line diagram	D15582		"	1-7			B
5	MFR DATA SHEET							B

REMARKS
SEE ATTACHED SHEET

I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as otherwise stated.

NAME AND SIGNATURE OF CONTRACTOR

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED (List by Item No.)	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE
7		

MATERIAL INSPECTION AND RECEIVING REPORT *CONTINUATION SHEET*

PAGE 2 OF 2

Form Approved OMB No. 0704-0248

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
SEND THIS FORM IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED IN THE DFARS, APPENDIX F-401.

SHIPMENT NO.	DATE SHIPPED	PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.	INVOICE NO.

ITEM NO.	STOCK/PART NO. DESCRIPTION *(Indicate number of shipping containers - type of container - container number.)*	QUANTITY SHIPPED/'D	UNIT	UNIT PRICE	AMOUNT
13	500' A UPS (ferrups) (FE5000000 S.N. 7863271)	1	ea		$0.00
14	Associated Cables	1	lot		$0.00
15	Panel Meter Inserts	13	ea		$0.00
16	Battery Cabinet	1	ea		$0.00
17	UPS Battery	1	ea		$0.00
18	UPS Battery	1	ea		$0.00
19	RTU Base (24" x 24")	1	ea		$0.00
20	RTU Base (24" x 30")	3	ea		$0.00
21	Position Analog Transmitter (model 3)	2	ea		$0.00
22	Shoulder Washers	1	lot		$0.00
23	Cement Anchors	1	lot		$0.00
24	Neoprine Robber Insulator	1	lot		$0.00
25	Unistrut Nuts	1	lot		$0.00
26	Thermostat Minco	1	ea		$0.00
27	Analalog Output Temperature Sensor (model 210-TPXX)	2	ea		$0.00
28	Rho Antenna Cable	500	lf		$0.00
29	Analog Output Temperature Sensor (model 210-TPXX)	2	ea		$0.00
30	RTU Base (24" x 24")	1	ea		$0.00

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J	1 | 4

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
P00023	04-Jun-2002		Install Automation

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than item 6)	CODE
USA ENGINEER DISTRICT-DETROIT CORPS OF ENGINEERS PO BOX 1027 DETROIT MI 48231-1027	W58ME502	See Item 6	

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)		9A. AMENDMENT OF SOLICITATION NO.
L&S ELECTRIC, INC SOROUSH ADIB PO BOX 748 SCHOFIELD WI 54476-0748		9B. DATED (SEE ITEM 11)
	X	10A. MOD. OF CONTRACT/ORDER NO. DACW35-99-C-0001
	X	10B. DATED (SEE ITEM 13) 02-Nov-1998
CODE 9S407	FACILITY CODE 9S407	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

☐ A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

☐ B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
Mutual Agreement

☐ D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
See following pages ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
SOROUSH Adib VP OF Engineering		GEORGE FEDYNSKY / ADDED BY SUMI	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
Soroush Adib	6/12/02	BY _____ (Signature of Contracting Officer)	06-Jun-2002
(Signature of person authorized to sign)			

EXCEPTION TO SF 30
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

Changes in Solicitation/Contraet/Order Form

The total cost has increased from $1,742,080.25 by $43,283.00 to $1,785,363.25

Changes in Section 00010

CLIN 0004

The total CLIN cost has increased from $76,900.00 by $6,796.00 to $83,696.00. The unit price amount has increased from $76,900.00 by $6,796.00 to $83,696.00

CLIN 0012

The total CLIN cost has increased from $57,750.00 by $18,987.00 to $76,737.00. The unit price amount has increased from $57,750.00 by $18,987.00 to $76,737.00

CLIN 0016

The total CLIN cost has increased from $47,500.00 by $17,500.00 to $65,000.00. The unit price amount has increased from $47.50 by $17.50 to $65.00

Changes in Section SF 30

It has been determined that the following five changes are necessary to obtain timely completion and to assure operability and maintainability of the automation system.

CHANGES TO THE PLANS AND SPECIFICATIONS

1. Refer to sheet 18 of 37. REPLACE note 4 with the follow text: "The Contractor shall install the RTD system described as "alternative 4" in the L&S Electric proposal dated 17 May 2002."

2. Refer to contract paragraph 16050-1.6.1(a). REPLACE the first sentence with the following text: "A 13.8KVA power connection in the CT/PT cabinets at units 1, 2 and 3 as described in the L&S Electric proposal dated 31 May 2002. Taps at the 5KV switchgear for Unit 3A and at the main leads in the basement of the Unit 10 powerhouse."

3. Refer to contract paragraph 16050-1.6.1(a). ADD the following text. "The Contractor shall install new 110VAC circuits for exciter light and service at units 1, 2 and 3 as described in the L&S Electric proposal dated 28 May 2002."

4. The Government will provide an adjustment for the price escalation in subcontract labor associated with contract line item 16.

5. Refer to Contract paragraph 3.9.2(f). DELETE the second sentence. The Contract may use the threader currently on-site to cut conduit.

Costs associated with each change follow:

Item 1 for the RTD system: ADD $18,987.00 to contract line item 12.
Item 2 for 13.8KVA power: ADD $5,421.00 to contract line item 4.
Item 3 for 110VAC power: ADD $1,375.00 to contract line item 4.
Item 4 for labor escalation: ADD $17,500.00 to contract line item 21.
Item 5 for rotary cutting is a "no cost" change.

It is understood and agreed that, pursuant to the above, time for completion of work remains UNCHANGED and the estimated total amount of the contract is INCREASED as shown elsewhere in this modification document.

It is acknowledged that payment for item 1, the RTD system, covers the cost of components and assembly. It may be necessary to negotiate additional field installation costs. This cost increase for item 1 is authorized to permit the Contractor to order the equipment without delay.

It is further understood and agreed that this modification constitutes compensation in full on behalf of the Contractor, subcontractors and suppliers for all costs and markups directly or indirectly attributable to the changes ordered herein, for all delays related thereto, and for performance of the changes within the time stated.

3.9 CONDUIT SYSTEMS

3.9.1 General . . .

3.9.2 Conduit, Fittings and Accessories Installation

Conduits, fittings and accessories shall be installed in accordance with details shown on the drawings and as specified herein: . . .

c. Conduit shall be installed with a minimum of bending and cutting. Conduits not dimensioned as to location shall be installed as shown on the drawings with limited adjustment to avoid interference with other work. Structural steel shall not be cut, drilled, or bent to avoid interference except when approved in writing. Conduit shall be rigidly attached with approved supports and anchors to the surface over which it is run. The maximum spacing of supports for exposed conduits shall be 8 feet. Supports for exposed conduit on concrete surfaces shall be fastened securely to the concrete with approved drilled steel concrete anchors. Neither non-ferrous anchors nor explosive-driven anchors will be accepted. [16050-45]

d. All conduit bends shall have a radius of not less than ten times the conduit's inside diameter. Conduit shall be straight and true with runs horizontal, vertical or parallel to structural lines. Diagonal runs shall be avoided insofar as possible. Where run in groups of two or more, conduits shall be secured by means of a common support with the individual conduits at least ½-inch clear of the surface and attached to the support by means of pipe clamps or approved equal. Individual conduits shall be mounted with clamps and clamp backs clear of the surface over which they are run, except that for runs not over 10 feet, they may be mounted directly on the surface. The maximum spacing of supports for conduit, unless otherwise indicated, shall not be greater than 7 feet for 3/4-inch conduit and 10 feet for one-inch and larger conduit. e. . . .

f. Metal conduits shall be cut only with a tool approved for the purpose. Roller type pipe cutters shall not be used on conduits. All cuts shall be square and the conduit opening shall not be constricted. After cutting and threading, conduit ends shall be reamed to remove rough edges and burrs and the entire conduit shall be thoroughly cleaned to remove all cuttings, dirt and oil from its interior. Threads shall be clean cut. Threaded joints in metal conduit and terminations in cast boxes shall have the threads coated with an approved joint compound, and shall be screwed tight to make the joint watertight and to provide electrical continuity of each conduit system.

POWER PRODUCTION & DISTRIBUTION - ST. MARYS FALLS POWER PLANT	Month of June 2002

TO:
Ch, Engineering & Technical Services
U.S. Army Engineer District, Detroit
Corps of Engineers
Detroit, MI 48231

Prepared by:
Area Engineer
Soo Area
St. Marys Falls Canal
Sault Ste. Marie, MI 49783

GENERATION, KILOWATT HOURS

Generator No. 1	1,071,800	
Generator No. 2	3,404,400	
Generator No. 3	3,636,300	
Generator No. 3A	1,846,600	
Generator No. 10	1,845,400	
Total Generated		11,804,500

DISTRIBUTION

Delivered to Edison Sault Electric Company:

Magazine Street Feeder No. 1	3,192,900	
Magazine Street Feeder No. 2	3,025,500	
Magazine Street Feeder No. 3	3,062,880	
Magazine Street Feeder No. 4	3,022,080	
Bascule Bridge Feeder	3,990	
N.W. Pier Feeder	123	
Total to Edison Sault Electric Company		11,307,593

Used on Project:

Canal Feeder No. 1	128,110	
Canal Feeder No. 3	105,071	
Total to Project		233,181

Used at Generating Station:

Station Service	57,456	
Distribution Losses	206,270	
Total to Generating Station		263,726
Total Distributed		11,804,500

60 Min Peak (Clock Hour) 20,900 KW @ 0700 hrs 12 June 2002

Output Factor 89.3% Total energy actually generated x 100 = 82.2%
Total energy which could have been generated at existing head

Comments: The average gross head at the Hydro Plant for the month = 20.23 ft. Unit #1 was removed from service on 10 June 2002 for automated system upgrades.

Typed Name and Title: STANLEY R. JACEK, P.E.
Area Engineer

Signature: S.R. Jacek

NCE Form 93
R 20 Aug 1976

(Edition of 1 Mar 73 is obsolete)

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of June, 2002

. . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

5. . . .

6.Unit #1 was removed from service at 0700 on 6-10-02 for automation project. It remained out of for the rest of the month for a loss of 2,278,500 KW

7. June 6 &7 buss section #l's buss volt secondary meter fuss had a ground fault resulting in a low meter reading of 62,000 kv this was added to feeder reading for the end of the month report

8 On 6-24-02 feeder #1 was removed from service at 0700 for automation work.

9 On 6-24-02 unit #2 was removed from service at 06:40 untill 00:30 on 6-25-02 this resulted in an outage of 17'50" and losses of 81,095 kw.

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of July 2002

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of July, 2002 . . .

6. Feeder # 1 remained out of service for the entire month of July due to contractor request.

7. Unit #1 Losses = 2,440,770 Kwh., OST.= 526 hrs. & 35 mins. for month of July

8. Unit #3A Losses = 1,214,691 Kwh., OST.= 517 hrs. & 20 mins. for month of July due to automation upgrade to unit.

9. Unit # 2 Losses = 377,612 Kwh., OST.= 82 hrs. & 40 mins. for month of July due to automation upgrade to unit.

Total losses for month of July were 4,033,073 Kwh's.

* Unit 1 Losses Are Not Continuous Through The Month

POWER PRODUCTION AND DISTRIBUTION - ST. MARYS FALLS POWER PLANT	Month of August 2002

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of August, 2002

. . . . .

6. On 8/1/02 the U.S. Hydro Plant regulated the City of Sault Ste. Marie from 1657 hrs. till 1830 hrs. due to system disturbances.

7. On 8/5/02 Unit # 1 was taken out of service for contractor work on DC. Annc. Bus work. OST.= 1 hr & 45 mins.

8. On 8/19/02 the 4KV. Bus was taken out of service at 0730 hrs. till 1730 hrs. for installation of automation equipment. OST.= 10 hrs.

9. On 8/27/02 Unit # 10 was taken out of service at 1300 hrs. till 1410 hrs. for removal of Unit Brake part for contractor. OST.= 1 hr. & 10 mins.

10. On 8/28/02 Unit # 3A was placed back in service at 1645 hrs.

11. On 8/29/02 Unit # 3A was taken out of service at 0730 hrs. till 0915 hrs. for Unit testing. OST.= 1 hr. & 45 mins.

12. Unit # 1 OST.= 1 hr. & 45 mins., Losses= 7,989 KWH. for month of Aug.

13. Unit # 2 OST.= 744 hrs., Losses= 3,429,748 KWH. for month of Aug.

14. Unit # 3A OST.= 642 hrs. & 30 mins., Losses= 1,576,160 KWH. for month of Aug .

15. Unit # 10 OST.= 3 hrs. & 55 mins., Losses= 8,452 KWH. for month of Aug.

Total Hydro plants Losses = 5,022,349 KWH. for month of Aug.

POWER PRODUCTION AND DISTRIBUTION - ST. MARYS FALLS POWER PLANT	Month of September 2002

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of September, 2002

. . .

4. Scheduled an unscheduled generator, feeder, or transformer outages did occur this month.unit #1 tripped off line by contractor

on sept. 4th dwn ½ hour, loss 2438 kwh.unit #1 taken off line for contractor work Sept. 9 for 9 hours 4 minutes loss was 45,675 kwh. unit #1 taken off line Sept 10 for contractor work, off line 15 minutes loss 1200kwh..unit #1 output was reduced due to conduit heating on sept. 10 loss was 29900kwh.unit #1 was taken out of service on sept 18 on unscheduled outage due to excitation problem o.s. 1' 10" loss 5300 kwh. unit #1 was taken o.s. on sept 25 for 15" for contractor work loss 1132 kwh. unit #1 loss for the month were 85645 kwh. o.s time was 11' 50".

unit #2 was off line for contractor rehab from sept. 1 to sept 24 total losses were 2,509,619 kwh total , o.s. time was 540'30"

unit #3 was taken off line for contractor rehab on sept 25 to end of the month total losses were 647165 kwh. total , o.s. time 136'43".

unit 3a had a unscheduled outage due to contractor tripping of unit on sept 4 losses were 2500kwh , o.s. time 1'00".

unit #10 was taken off line for contractor rehab on sept.5 till the end of month total losses were 1,561,705 kwh total , o.s. time 657' 00"

total losses for sept were 4,806,634 kwh's

[illegible] was O.S. entire month.

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of October 2002

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of October, 2002

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

5. Request for breakdown or low head power from the Edison Sault Electric Co. was not made or required this month.

6. Unit #3 was O. S. for rehab the entire month totaling 744 Hrs., resulting in losses of 3,560,552 KWH.

7. Unit #10 was O.S. for rehab the entire month totaling 744 Hrs., resulting in losses of 1,786,620 KWH.

8. Unit #2 O.S. on Oct. 2, for contractor testing for 35", resulting in losses total 2872 KWH.

9. Unit #3A tripped off line on Oct.15 by contractor, O.S. time was 5'15" resulting losses totaling 26,119 KWH.

10. Unit #3A regulated the lock load for a total of 37' 45" during the month of Oct while the contractor worked on Bus Section #2 , resulting in losses totaling 82,180 KWH.

11. On Oct. 28th., unit #3A tripped off on Hi Governor oil pressure. O.S. time was 11'30" resulting in losses totaling 28,645 KWH.

12. Feeder #1 was out of service from Oct. 1 until 09:30 Oct. 10. Feeder #1 MWH is not reading accurately.

13. Feeder #3 was out of service from Oct. 17, to Oct. 31, for contractor rehab.

14. Losses for the month of Oct . totaled 5,486,988 KWH'S.

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of November 2002

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of November, 2002

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

5. Request for breakdown or low head power from the Edison Sault Electric Co. was not made or required this month.

6. There were several outages due to the automation contract in the month of Nov. they were.

Unit #3	O S T	414 hours 53 min.	losses 1,890,786 KW
Unit #10	O S T	720 hours	losses 1,722,600 KW
Unit #3A	O S T	35 min.	losses 1429 KW
Unit #2	O S T	1hour	losses 4,825 KW

Feeders #1,3,and 4 were out or have not had there new meeters calibrated so the first page of this report will read incorrectly.

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of December 2002

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of December, 2002 . . . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

. . . . . .

6. Feeder # 4 was out of service the entire month of December.

. . . . . .

8. Unit #1 experienced Governor problems causing loss of generation & unit outages on the following dates 18, 19, 26, 27, 31st. of December. (Losses & Outage times are listed below).

9. Unit #1 Gate position was backed down to 60 % gate due to erratic swinging of all generating units for following dates, 12/25 & again on 12/31 resulting in Losses= 117,000 KWH.

The following is Out of Service times & Losses of Generation due to Automation Rehab efforts & associated Unit Governors, Excitation issues for month of December 2002.

Unit # 1 OST= 22hrs. & 12mins., Losses= 124,266 KWH.
Unit # 3 OST= 56hrs. & 40 mins., Losses= 277,573 KWH.
Unit # 3A OST= 17 mins., Losses= 703 KWH.
Unit # 10 OST= 744 hrs., Losses= 1,769,760 KWH.

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of January 2003

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of January, 2003 . . . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

. . . . . .

6. Unit #10 was of line for the month while contractor installs automation eqiuptment, total losses of1755870 KW

7.Units 1,2,3,and 3A Where on and off line numerous times during the month due to automation problems and contractor requested shutdowns total losses on these units were 1590668 KW

8. Feeder #4 was out due to contractor work from 1/1/03 @ 00:00hrs to 1/21/03 @ 09:30hrs.

9. Feeder #2 was out due to contractor work from 09:30hrs on 1/21/03 to 10:15hrs on 1/28/03.

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of February 2003

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of February, 2003 . . . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

. . . . . .

6. All five units were out of service at differen't times with contractors trying to complete automation project. Losses were as follows.

Unit # 1 209,864 KW
Unit # 2 144,075 KW
Unit # 3 145,344 KW
Unit #3-A 67,159 KW
Unit #10 1,595,500 KW

POWER PRODUCTION AND DISTRIBUTION – ST. MARYS FALLS POWER PLANT	Month of March 2003

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of March, 2003 . . . . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

. . . . . .

6.All five units were out of service at differen't times with contractors trying to complete automation project. Losses were as follows:

Unit #1 80,523 KWH losses OST 17'15"
Unit #2 67,822 KWH losses OST 12' 30"
Unit #3 158,908 KWH losses OST 35' 53"
Unit #3A 90,910 KWH losses OST 30' 55"
Unit #10 1,540,710 KWH losses OST 744"

POWER PRODUCTION AND DISTRIBUTION - ST. MARYS FALLS POWER PLANT	Month of April 2003

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of April, 2003

. . . . . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

. . . . . .

6. All five units were out of service at different times with contractors trying to complete automation project. Losses were as follows:

Unit #1	10,066 KWH losses	OST 2' 10"
Unit #2	26,444 KWH losses	OST 5' 31"
Unit #3	13,431 KWH losses	OST 2' 52"
Unit #3A	27,569 KWH losses	OST 11' 50"
Unit 10	1,718,970 KWH losses	OST 720'

POWER PRODUCTION AND DISTRIBUTION - ST. MARYS FALLS POWER PLANT	Month of May 2003

Generator, Feeder, and Transformer outages; Power request from Edison Sault Electric Co; Clock Hour Peak; canal demand and plant gross head for the month of May, 2003

. . . . . .

4. Scheduled or unscheduled generator, feeder, or transformer outages did occur this month.

. . . . . .

6. Total losses per. unit are as follows.

#1 44,483 KWH out of service for 8Hrs 20Min
#2 10,309 KWH out of service for 2Hrs
#3 6718 KWH out of service for 1Hr 15Min
#3A 408,533 KWH out of service for 162Hrs 44Min
#10 1,750,640 KWH out of service for 744Hrs

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J	1 3

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
P00003	18-Dec-2002		

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than item 6)	CODE
TARDEC DIVISION AMSTA-TR-N DISTRICT USARMY P O BOX 1927 DETROIT MI 48231-1927	H7P0000	DCMAO DETROIT 500 AREA OFFICE DETROIT DISTRICT, 485ED ST MARYS PKWY E SAULT STE MARIE MI 49783	H7M0T00

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)		
VOUGHT COMPANY COMPUTERS INC 750 EAST BERLIN ROAD YORK PA 17408		9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	X	10A. MOD. OF CONTRACT/ORDER NO. DAAE30-98-C-0008
	X	10B. DATED (SEE ITEM 13) 09-Sep-2002

CODE 1GAM4 FACILITY CODE 1GAM4

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
Mutual Agreement

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, X is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
See Continuing Pages

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remain unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) GEORGE FEDYNSKY / ADDED BY SUM TEL: 313 274 6366 EMAIL: George.Fedynsky@dcma.mil	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY (Signature of Contracting Officer)	16C. DATE SIGNED 18-Dec-2002

EXCEPTION TO SF 30
APPROVED BY OIRM 11-84

10-105-04

STANDARD FORM 30 (Rev. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

SECTION SF 30 BLOCK 14 CONTINUATION PAGE
SUMMARY OF CHANGES
SECTION SF 30 - BLOCK 14 CONTINUATION PAGE

The following have been added by full text:

REPLACEMENT TRANSDUCERS

Add the following paragraph to specification 16252.2.6 Gate Position Transducer Assembly

16252.2.6.1

Also furnish and deliver five (5) MLDT assemblies consisting of housings, transducers, cables, programming jacks and one handheld programmer. Also provide one (1) spare MLDT and programming jack. The MLDTs shall be suitable to handle slight vibrations and shall be the GEMCO as described in Voith Siemens Hydro proposal #71530 or approved equal.

Corrections to Modification P00001

Make the following correction to CLIN 7AC as described in PD2 designated P00001. Change the total dollar amount from $58,700 to $58,750. This change will fix an error in a table but will not change the total dollar amount of the contract.

It is understood and agreed that, pursuant to the above, time for completion of work remains UNCHANGED and the estimated total amount of the contract is INCREASED by $25,350.00 from $591, 693.00, as established by PD2 designated P00001 to $617,043.00.

It is further understood and agreed that this modification constitutes compensation in full on behalf of the Contractor and its subcontractors and suppliers for all costs and markups directly or indirectly attributable to the changes ordered herein, for all delays related thereto, and for the performance of the changes within the time stated.

SECTION A - SOLICITATION/CONTRACT FORM

The total cost of this contract was increased by $25,350.00 from $591,693.00 to $617,043.00.

SECTION B - SUPPLIES OR SERVICES AND PRICES
CLIN 0001

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J	1 | 3

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO (If applicable)
P00040	05-Jan-2004	[illegible]	

6. ISSUED BY — CODE: W911XK
CONTRACTING DIVISION
DETROIT DISTRICT, USACE P.O. BOX 1027
DETROIT MI 48231-1027

7. ADMINISTERED BY (If other than item 6) — CODE: H7M0T00
SOO AREA OFFICE
DETROIT DISTRICT, USACE ST. MARYS FALLS C
SAULT STE MARIE MI 49783

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)
L&S ELECTRIC, INC
SOROUSH ADIB
PO BOX 749
SCHOFIELD WI 54476-0749

CODE 95407 — FACILITY CODE 95407

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

X 10A. MOD. OF CONTRACT/ORDER NO.
DACW35-99-C-0001

X 10B. DATED (SEE ITEM 13)
02-Nov-1998

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
Mutual Agreement

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
See Continuing Pages

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) STANLEY R JACEK / ADDED BY SUNI TEL: 616 632 3311 EMAIL:	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY [signature] (Signature of Contracting Officer)	16C. DATE SIGNED 07 Jan 2004

SECTION SF 30 BLOCK 14 CONTINUATION PAGE
SUMMARY OF CHANGES
SECTION SF 30 - BLOCK 14 CONTINUATION PAGE
The following have been added by full text:

FIELD ENGINEER & TRANSFORMER

It has been determined that in view of the necessity to provide for additional field engineering, and to purchase an upgraded phase shift transformer, it is in the best interest of the Government to modify this contract as follows:

- ~~Provide onsite~~ field engineering support for five weeks ($25,875.00).
- Provide an upgraded phase shift transformer to enable unit 3A to be auto-synced ($265.00).

It is understood and agreed that, pursuant to the above, time for completion of work remains UNCHANGED and the estimated total amount of the contract is INCREASED $26,140.00 from $2,145,941.65 as established by Modification P00038, to $2,172,081.65.

It is further understood and agreed that this modification constitutes compensation in full on behalf of the Contractor and its subcontractors and suppliers for all costs and markups directly or indirectly attributable to the change ordered herein, for all delays related thereto, and for the performance of the changes within the time stated.

SECTION 00010 - SOLICITATION CONTRACT FORM

The total cost of this contract was increased by $26,140.00 from $2,145,941.65 to $2,172,081.65.

CLIN 0031 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0031		1.00	Lump Sum	$26,140.00	$26,140.00
	Field Engineer and transformer				
	FFP			NET AMT	$26,140.00

FOB: Destination

INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for CLIN 0031:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

A-11

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS

OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER	PAGE 1 OF 17
W56MEB-7329-8470 001	

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE
DACW35-98-C-0006	02/25/98			

7. FOR SOLICITATION INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY	CODE W56MSS02	10. THIS ACQUISITION IS	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED	12. DISCOUNT TERMS
USA Engineer District-Detroit Corps of Engineers PO BOX 1027 DETROIT MI 48231 1027 Marilyn Hill (313) 226-6431		☐ UNRESTRICTED ☐ SETASIDE: % FOR ☐ SMALL BUSINESS ☐ SMALL DISADV. BUSINESS ☐ WAI SIC: SIZE STANDARD:	☐ SEE SCHEDULE ☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION ☐ RFQ ☐ IFB ☐ RFP	00.0000 Days 0 Net 30

15. DELIVER TO	CODE S3607A	16. ADMINISTERED BY	CODE EMPTY
WAREHOUSE SECTION SOO AREA OFFICE ST MARYS FALLS CANAL SAULT STE MARIE, MI 49783			

17a. CONTRACTOR/ OFFEROR CODE 00000438	FACILITY CODE	18a. PAYMENT WILL BE MADE BY	CODE HQ0300
VOITH HYDRO INCORPORATED 760 EAST BERLIN ROAD PO BOX 712 YORK PA 17405 Phone (717) 792-7872		USAFD, DETROIT DISTRICT C/O DFAS, FINANCE CENTER 7800 THIRD AVENUE WILLINGTON TN 38054-5005	EFT: Y

☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☒ SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
0001	Soo governor System: Supply, Design, manufacture and deliver digital controller equipment for existing units 1-3 Governors (See Section 16252)	1.00	JB	380893.000000	380893.00
0002	Soo governor system: Supply, Design, manufacture and deliver digital	1.00	JB	133639.000000	133639.00
	(Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA				Award Oblig Amt: US$	26. TOTAL AWARD AMOUNT (For Govt. Use Only)
96X3123B000 982627	3200001WX0017180	HA	96203	-517,180.00	$ 517,180.00

☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.

☒ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☒ ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

☒ 29. AWARD OF CONTRACT: REFERENCE Clifford M. Hoenstine OFFER DATED 01/23/98 YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)	
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) George Podymaky k94	31c. DATE SIGNED

32a. QUANTITY IN COLUMN 21 HAS BEEN	33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR
☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED	PARTIAL FINAL		

32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE	32c. DATE	36. PAYMENT ☐ COMPLETE ☐ PARTIAL ☐ FINAL	37. CHECK NUMBER
		38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER
		40a. RECEIVED BY (Print)	40. PAID BY
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42a. RECEIVED AT (Location)	
		42b. RECEIVED (YY/MM/DD)	42c. TOTAL CONTAINERS

MAR - 2 1998

U.S. Army Corps of Engineers

AUTHORIZED FOR LOCAL REPRODUCTION — SEE REVERSE FOR OMB CONTROL NUMBER AND PAPERWORK BURDEN STATEMENT — STANDARD FORM 1449 (10-95) Prescribed by GSA FAR (48 CFR) 53.212

COPY FOR YOUR INFORMATION

[Commerce Business Daily: Posted June 1, 1998]
[Printed Issue Date: June 3, 1998]
From the Commerce Business Daily Online via GPO Access
[cbdnet.access.gpo.qov]

PART: CONTRACT AWARDS
SUBPART: SUPPLIES, EQUIPMENT AND MATERIAL
CLASSCOD: 61--Electrical Wire, and Power and Distribution Equipment
OFFADD: U.S. Army Engineer District, Detroit, 477 Michigan Ave, Detroit, MI 48226
SUBJECT: 61--EXCITATION SYSTEM
POC Marilyn Hill (313) 226-6431
CNT DACW35-98-C-0022
AMT $623,049.00
DTD 052998
TO Canadian Commercial Corporation, 50 O'Conner Street, K1A0S Ottawa, Ontario, Canada
CITE: (W-152 SN206059)

Award

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS

OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER	PAGE 1 OF 1
456MES-8005-9907	

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE
DACW35-98-C-0028	07/10/98		DACW35-98-R-0003	

7. FOR SOLICITATION INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY	CODE 456MES02	10. THIS ACQUISITION IS	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED	12. DISCOUNT TERMS
USA Engineer District Detroit Corps of Engineers PO BOX 1027 DETROIT MI 48231-1027 Marilyn Hill (313) 226-6431		☐ UNRESTRICTED ☐ SET ASIDE % FOR ☐ SMALL BUSINESS ☐ SMALL DISADV. BUSINESS ☐ WOMEN-OWNED SIC: SIZE STANDARD	☐ SEE SCHEDULE	00.000% Days 0 Net 30
			☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	
			13b. RATING	
			14. METHOD OF SOLICITATION ☐ RFQ ☐ IFB ☐ RFP	

15. DELIVER TO	CODE F19ZTA	16. ADMINISTERED BY	CODE EMPTY
WAREHOUSE SECTION SOO AREA OFFICE ST. MARYS FALLS CANAL SAULT STE.MARIE, MI 49783			

17a. CONTRACTOR/ OFFEROR CODE 30908448 FACILITY CODE	18a. PAYMENT WILL BE MADE BY	CODE S0600300
SCIPAR INCORPORATED 26 WEST SPRING STREET PO BOX 600 BUFFALO NY 14231-2108 Phone (716) 631-3730	USAED, DETROIT DISTRICT ATTN: CEFMO-C/O USACE, FINANCE CENTER 7900 THIRD AVENUE MILLINGTON TN 38054-5005	EFT: Y
☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☒ SEE ADDENDUM	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Supervisory Control and Data Acquisition (SCADA) system which will serve to automate control and operation of five hydroelectric generation units at the Soo Locks Complex. (Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA	Award Oblig Amt US$	26. TOTAL AWARD AMOUNT (For Govt. Use Only)
96X3123000 0B2437 3250001WQ017380 HA 96203	26,000.00	$ 902,938.08

☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.

☑ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☑ ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.	29. AWARD OF CONTRACT: REFERENCE ☐ OFFER DATED , YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:
30a. SIGNATURE OF OFFEROR/CONTRACTOR	31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) George Fedynsky
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)	30c. DATE SIGNED
	31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) George Fedynsky k04
	31c. DATE SIGNED

32a. QUANTITY IN COLUMN 21 HAS BEEN ☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED 4 Each	33. SHIP NUMBER PARTIAL FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE	32c. DATE	36. PAYMENT ☐ COMPLETE ☐ PARTIAL ☐ FINAL	37. CHECK NUMBER
		38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY (Print)	40. PAID BY
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT (Location)	
		42c. DATE REC'D (YY/MM/DD)	42d. TOTAL CONTAINERS

AUTHORIZED FOR LOCAL REPRODUCTION — SEE REVERSE FOR OMB CONTROL NUMBER AND PAPERWORK BURDEN STATEMENT — STANDARD FORM 1449 (10-95) Prescribed by GSA FAR (48 CFR) 53.212

COPY FOR YOUR

Sunday October 26, 2003

APTUS Company
3527 Woodvalley Drive
Houston, Texas 77025-4232
Voice & fax: (713) 666-3816
e-mail: aptusco@hotmail.com

Wage and Hour Administrator
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
(202) 693-0535

via Postal Service's Express Mail
(#EE509984209US)

Re: Request for Administrator's review and action for
Resolution of Disputes Concerning Labor Standards
In accordance with 29 CFR parts 5, 6 and 7

Dear Honorable Administrator,

On November 5, 1998, Petitioner APTUS Company, an individual S. Emanuel Lin, was awarded a fix-priced construction contract from U. S. Army Corps of Engineers, Detroit District, for the installation of power plant automation equipment (Contract No. DACW35-C-99-0001) at the hydro power plant in St. Mary's Fall, Sault Ste. Marie, Michigan.

There had been little constructions for about a year since the award of the contract. When the construction got started, I first brought Mr. Doug Christenson, a local high school graduate, to work at the job site on January 6, 2000 as a "logistic support" and a week later, his same-age cousin Mr. Ezra Glenn. Mr. Christenson left me at his own will in less than a month on January 31, 2000 so did Mr. Glenn on February 23, 2000. On the following day, an unexpected discovery of problems in Government-furnished property frustrated further employment of any manual worker.

APTUS Company had been a one-man company for some years. Before the award of this Michigan contract, I had completed three electrical contracts by myself. I certainly did not enter the installation contract with sufficient understanding of the Davis-Bacon Act.

On February 29, 2000, I submitted a *Request for Authorization of Additional Classification and Rate* on standard form 1444 (*See* Exhibit on page 4). It was returned un-processed for want of employee's signature thereon. I could not concur with Government's

In the United States Court of Federal Claims

APTUS Company,	§	
Plaintiff.	§	
v.	§	No. 01-362C
	§	(Sr. Judge Gibson)
THE UNITED STATES,	§	
Defendant.	§	

SECOND MOTION TO EXCLUDE TRIAL OF LABOR ISSUES

TO THE HONORABLE JUDGE OF THE COURT,

COMES NOW Plaintiff APTUS Company and files this *Second Motion To Exclude Trial Of Labor Issues* and would respectfully show the Court the following:

Around 12:52 p.m. CDT on Sunday October 26, 2003, Plaintiff placed in the hands of United States Postal Service (*See* Exhibit 1) the attached letter (*See* Exhibit 2) requesting Wage and Hour Administrator's review and action for resolution of disputes concerning labor standards in accordance with 29 CFR parts 5, 6 and 7.

The Installation Contract at issue (No. DACW35-C-99-0001) includes 48 CFR 52.222.14 *Disputes Concerning Labor Standards* (Feb 1998):

> The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Under the Federal Acquisition Regulations specifying the labor provisions that certain federal procurement contracts must include, "disputes arising out of the labor standards provisions of the contracts are not to be subject to the contract Disputes Act, but are to be resolved 'in accordance with the procedures of the Department of Labor' (which clearly means by the department)." *Emerald Maint-*

In the United States Court of Federal Claims

****

APTUS COMPANY,
Plaintiff

v.

THE UNITED STATES,
Defendant.

No. 01-362C
(Filed: July 28, 2004)

****

ORDER

On June 7, 2004, this court issued an Order regarding the schedule and format of post-trial briefing for the above-captioned case. Said order contained the following instructions:

The briefs of the parties shall comply with the following guidelines:

1. The parties shall quote the operative language from cases cited in *haec verba*, and provide the court with pincites for each citation.
2. The parties shall not use redundant string citations to caselaw or statutory authority, nor cite the same without applying said law to the operative facts.
3. The parties shall note if the quoted language cited is other than holding.
4. The parties shall support all factual assertions with clear references to the transcript and/or exhibits) in evidence. The parties are reminded that only the sworn testimony of witnesses, admissions, and exhibits constitute evidence.

Further, the court admonished the parties at the close of the trial regarding the format for post-trial briefing, stating: "It's key that you cross reference. As previously stated, this is imperative. Every conclusion you make in your post-trial briefing, factual, you cross reference it to the transcript and exhibits to support

your factual contentions.... The job that you must do there has to be meticulous." Tr. 1710.

Upon review of Defendant's Post-Trial Reply Brief, we find that the government failed to comply with said Order and admonishments. The government's reply brief is entirely bereft of citations to the record. The writing is conclusory, and utterly devoid of factual analysis. Thus, it is of absolutely no assistance to the court as we formulate our opinion. In short, this court finds said brief is unacceptable, as it fails to conform to the explicit instructions provided by the court.

In light of the foregoing, the defendant is hereby ORDERED to re-draft its reply brief in accordance with the court's instructions. Defendant shall file Defendant's First Amended Post-Trial Reply Brief with the Office of the Clerk of the Court not later than 2:00 PM on August 6, 2004.

IT IS SO ORDERED.

Reginald W. Gibson, Senior Judge

05-5030

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

S. EMANUEL LIN
(Doing business as Aptus Company)
Plaintiff-Appellant

v.

UNITED STATES
Defendant-Appellee

BRIEF OF DEFENDANT-APPELLEE, THE UNITED STATES

. . . .

COUNTER STATEMENT OF FACTS

This appeal concerns a project to modernize, upgrade, and automate a hydroelectric power plant operated by the United States Army Corps of Engineers ("USACE") along the St. Mary's River in Sault Ste. Marie, Michigan. On July 27, 1998, an Invitation for Bids was issued, requesting bids for the installation of Governor, Excitation, and SCADA systems in connection with the automation of the hydroelectric power plant. DA134-35, 3 19. The solicitation anticipated that the contractor would install certain Government-furnished equipment ("GFE"), modify other existing equipment, and design and install new relaying schemes and equipment. DA 134-35. The contractor was also responsible for designing a system for the GFE to work together, as well as to perform the necessary modifications to the existing equipment to automate the plant. Id.

Aptus was the low bidder, with a bid of $1,265,110. DA3 19. Prior to award, the USACE conducted a pre-award survey to determine whether Aptus, a -4-
small, disadvantaged business that had no full-time staff, was qualified to perform. DA120-21, 319. Aptus represented in writing to the USACE that it would hire the necessary personnel to perform the work. DA330-32. After receiving assurances from Aptus that it would hire the proper types and numbers of skilled workers necessary to perform the contract requirements, the USACE awarded the contract to Aptus on November 5, 1998. DA121-22, 264.

Notice to Proceed was issued and acknowledged on December 9, 1998. DA339. In November 1999, as a result of delays in supplying the Governor and Excitation equipment, the parties agreed

BY MR. LIN:

Q Mr. Lin, in March 1999, after receiving the Preliminary design of Voith Hydro about Governor's equipment, did you make a suggestion to the government that the speed picker plate does not have to be drilled through the bottom of generator bearing plate?

A Yes.

Q To whom did you bring up this issue?

A I talked to Mr. Erfourth after surveying the generator.

Q What result for your suggestion?

A The government found it was inappropriate to drill the hole through the bottom of generator bearing plate.

Q What was the revised design?

A Voith Hydro --

THE COURT: What was the revised design of what?

BY MR. LIN:

Q Mr. Lin, can you describe the speed sensing plate in a non-technical term?

A Yes. In order to pick up --to detect the speed of the generator, Governor equipment need to install a sensor --need to install three sensors on the plate. And according to Voith initial design, it was to be mounted on the bottom of the generator bearing plate.

Q What was the revised design?

A The revised design, to mount the same plate, utilizing the existing bolt at the peripheral --located at the peripheral of the generator bearing plate.

THE COURT: Are you reading from a document?

THE WITNESS: No, I'm not.

THE COURT: You're testifying from your present recollection off the top of your head?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. You may proceed.

BY MR. LIN:

Q Mr. Lin, what advantage did you have with this kind of revised design?

A It saved me the labor to drill a hole through the bottom of the generator bearing plate.

Q Do you consider this suggestion as part of your accomplishment or performance of the contract?

A Yes. I planned to install the equipment in the most efficient way, by revising the design and accepted by government and the manufacturer. It saved me considerable amount of time in installing that portions of the equipment.

Q Mr. Lin, do you consider that as a small progress toward completing the contract?

A Yes.

Q Mr. Lin, what else did you find about the design of Governor's manufacturing design?

Q Mr. Lin, after your Invoice Request No. 2, made on September 30, 1999, until the termination of contract, did you receive any payment from government for the work performed under the instant contract at bar?

A No.

Q Mr. Lin, within these periods that you did not receive further payment from government, did you continuously move the instant contract forward?

A Yes.

Q Mr. Lin, during the period after you submitted Invoice No. 2 until the end, until the date of contract termination, did the lack of payment in this period prevent you to send money or to hire people or to establish necessary worker or engineer to carry this installation contract forward?

A No.

THE WITNESS: Your Honor, I have no further direct testimony.

THE COURT: All right. Very well. You may step down, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: We'll recess until one-thirty. Then you may proceed with your cross-examination.

MR. AVERBACH: Your Honor, may I inquire before the break whether the Court would entertain my renewed

motion to exceed the scope of direct, just so I can prepare for Mr. Lin's cross-examination?

THE COURT: So you will waive calling Mr. Lin as your witness.

MR. AVERBACH: Yes, Your Honor. To clarify, in addition, Your Honor, I would be making a motion to exceed the scope of direct with respect to each of the witnesses.

THE COURT: No. I'm going to keep it simple. I'm going to deny your request. I want to keep it simple. I want to keep it simple. We have a pro se litigant here, and we'll keep it simple. You're limited to direct on cross.

All right. One-thirty.

(Whereupon, at 12:08 p.m., a luncheon recess was taken.)

THE COURT: Are you saying, Governor manufactured equipment?

THE WITNESS: Yes. Answer: I read the initial drawing provided by Ms. Zeigler. I noticed that the speed disk manufactured according to the design was most likely unsuitable for installation.

BY MR. LIN:

Q Why was it?

A The speed disk consists of two halves bolted on both end by two bolts. In order to have the two halves to stay tightly around the axles of the generator, the measurement need to be very, very accurate, meaning it has to be a little bit smaller than the diameter of the generator axle.

Q How did you find out this could be a problem?

A It was from my experience in rebuilding a Volkswagen engine. I was aware of the currents required to make the speed disk match tightly against --around axle require a precise measurement.

MR. AVERBACH: Your Honor, this testimony does not go to any of the reasons for which Aptus was terminated for default. There are a number of discrete reasons, which I explained to the Court in my opening statement. This entire line of testimony deals with a separate issue. Apparently, Mr. Lin contends, in this particular circumstance, he did a

piece of good work. That may or may not be true, but it's not relevant to the issue of why he was terminated for default or whether his default should be excused, to the issues in this case. And, I, therefore, object on relevance grounds to this line of testimony.

THE WITNESS: Your Honor --

THE COURT: What's the relevance of this testimony --

THE WITNESS: The relevancy of the testimony --

THE COURT: -- on the issue in this case?

THE WITNESS: -- on the issue in this case is without a suitable government-furnished equipment, even if Aptus had all the crews on site, we still made no progress, because, at that time, we would find the speed disk would not be able to be installed on the generator axle. Meaning, even we could mounted them, but the disk would be sliding downward when the speed. We feel the difference in engineering in this contract was government sees only the time line, but Plaintiff sees that even if we reached the time line, even if we had all the people, but you have defective parts, there was no progress at all, even on the face when they look very well. However, at the time when we asked generator to shut down, we found out the disk could not be snatched tightly against the axle. The whole Governor equipment would not work. And when the Governor --

when the generator had been shut down, we were --it would take much longer to have the disk re-kneeled in the center.

And this is only one of the examples in the entire performance of my contract. It is my approach. There is no use to rush to have the generator shut down to find the parts, which take a week or two weeks to make, could not be installed. And then when the generator shut down, it's very difficult.

THE COURT: All right. Objection is overruled. Testimony stand. Proceed. Ask the next question.

BY MR. LIN:

Q Mr. Lin, after bringing the issue up to Voith through government, did Voith make changes in the manufacturing process?

A Yes.

THE COURT: In the manufacturing process of what?

THE WITNESS: In the manufacturing of speed disk to be installed under the contract.

May I have Plaintiff Exhibit 51, stipulated Exhibit 51? Actually, it's already admitted in evidence. Thank you.

THE COURT: Is that previously numbered 164?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Proceed.

BY MR. LIN:

Q Mr. Lin, what's the key issue to make a true progress in an engineering project?

MR. AVERBACH: Your Honor, I object to that question as vague.

THE COURT: On what grounds, sir?

MR. AVERBACH: On vagueness grounds, Your Honor.

THE COURT: Restate your question, sir. You may restate the same question. Let me hear it again, sir.

BY MR. LIN:

Q Mr. Lin, in order to make a true progress in this installation contract, what do you think the most important issue?

THE COURT: Do you object?

MR. AVERBACH: Not to that question, no.

THE COURT: All right. You may answer.

THE WITNESS: Answer: Before we call for a generator shutdown, it is imperative for an installation contractor to examine to proceed step by step to make sure all the equipment furnished by government is suitable for installation.

BY MR. LIN:

Q Mr. Lin, why were you concerned about the suitability of government-furnished equipment?

A According to the contract specification, the 21-day limit specified in the contract include repair of

malfunctioned components, include the time needed to complete the testing of these equipment.

THE COURT: Mr. Lin, under the contract, who was the final arbiter as to whether or not government-furnished equipment was suitable? Do you understand the question?

THE WITNESS: I do.

THE COURT: All right. What's your answer? Now, I preface my question with, under the contract provisions, who was the final arbiter?

THE WITNESS: Nobody. The contract specifically said -- I can't find that portion of the contract -- specifically stated that installation contractor is not responsible for an error in the design or manufacturing or the drawing provided to the installation contractor -- if I search my computer --

THE COURT: By the government.

THE WITNESS: By the government. If I search my computer, I can find that portion of the contract. That's why I use my computer.

BY MR. LIN:

Q But, Mr. Lin, why did you take such cautious approach?

A I did not want to be in dispute on the time or the failure to meet either 21-day completion generator out-of-service time or the total completion date under the extended

contract.

Q Mr. Lin, when was the installation contract modified to extend the original 450 days to 600 days?

A I think I need to go to a document. It's safer to do so.

(Pause.)

THE WITNESS: Your Honor, if you will allow me to search my computer, it will be faster. It's something around Modification No. 7.

THE COURT: Do you have any objection, Mr. Averbach?

MR. AVERBACH: Looking at his computer? No. While he is searching, I just wanted to confirm with the Court that what's designated as 1A, which is really the second binder of the contract, --

THE WITNESS: Actually, I'm looking at 1A --

MR. AVERBACH: I just want to confirm that that's all part and parcel of Exhibit 1.

THE CLERK: Actually, it is now part and parcel of Plaintiff's 212, both binders.

MR. AVERBACH: Okay. Thank you.

(Pause.)

MR. AVERBACH: Your Honor, if it would help, I can identify the provision --

THE WITNESS: Yes. I found it, Your Honor. It's

but I don't know who saw it.

THE COURT: Mr. Shank, the Court asks you to listen carefully here. You tend to have the proclivity to testify impulsively.

THE WITNESS: Okay.

THE COURT: And while the Court has never seen you before the Court sees you as a bright young man. And I don't see that as your personality.

THE WITNESS: Okay.

THE COURT: So you are duty bound to testify truthfully, accurately under oath. That's a duty. Do you understand that, sir.

THE WITNESS: Okay.

THE COURT: All right. Then that's all the Court's going to say.

THE WITNESS: Okay.

THE COURT: All right, you may proceed, sir.

BY MR. LIN:

Q Mr. Shank, in order to produce this exciter modification procedures does installation contractor incur costs?

A I assume he does. Can you reword?

Q Do you expect them not to incur costs?

A Well, probably not.

Q What is your answer?

MR. LUBICK: Objection, Your Honor. He's arguing with the witness.

THE COURT: Overruled. The witness is evasive.

THE WITNESS: Okay.

THE COURT: That's the Court's perception here. Your evasive testimony, Mr. Shank, doesn't bode well for you.

THE WITNESS: Okay. I'm not trying to be evasive, I'm sorry.

THE COURT: Well, that's the perception of the Court.

THE WITNESS: Okay.

THE COURT: That's the perception you're giving the Court.

THE WITNESS: Okay.

THE COURT: You are intentionally being evasive.

THE WITNESS: Okay. I will try to be direct and to the point.

THE COURT: Now, if you want to pursue that approach you do it at your peril.

THE WITNESS: Okay. Thank you.

THE COURT: All right. And a word to the wise is sufficient.

You may proceed.

MR. LIN: Let me rephrase my question.

up?

A I am not sure that I understand the question. Could you reword it?

THE COURT: The question is not that confusing, Mr. Shank. The Court has the sense that you understand the question. Answer the question, Mr. Shank. You are not confused by the context of Mr. Lin's question.

THE WITNESS: Does --

THE COURT: It is not appropriate for you to be as evasive as the Court perceives you to be here, and listen to the Court here for a second, sir. I would urge that you not continue to proceed in that fashion.

THE WITNESS: I guess you are talking about the cable and the conduit, the wiring?

THE COURT: Mr. Shank, you are an engineer, and you are a graduate engineer.

THE WITNESS: Yes.

THE COURT: You participated in the contract at bar. You understand the context of Mr. Lin's question. There is no doubt in this Court's mind. You are intentionally being evasive.

Now, if you wish to continue in this method, I will simply say at this posture that it is not in your interests to be evasive, particularly intentionally.

THE WITNESS: Okay.

THE COURT: You are required to testify truthfully under oath, and you must do so, sir.

BY MR. LIN:

Q Mr. Shank, how many years --

THE COURT: And I am going to suggest that government counsel communicate with you at the lunch break on your responsibility here as a witness.

THE WITNESS: I'm sorry.

BY MR. LIN:

Q Mr. Shank, how many years did you spend working at the Hydroelectric Design Center in Portland, Oregon?

A Approximately 8 years.

Q How many contract specifications were you involved with during that 8 years at the Hydroelectric Design Center?

A Quite a few. I am not sure of the exact number.

THE COURT: Approximately, sir. Your best recollection.

THE WITNESS: I would say there is probably at least 15 or maybe more.

THE COURT: Why don't we break for lunch?

(Whereupon, at 11:45 a.m., a luncheon recess was taken.)

Q What kind of costs is involved here for the activity that you just described?

A I am not sure what you mean by what type of costs.

Q You just mentioned that it involved the placement of the equipment. Am I correct?

A Yes.

Q Did you just say that it involved the anchoring of the equipment to the floor; am I correct?

A Yes.

Q Can you identify that kind of cost in performing the task that you just described?

A I guess I am confused by what you mean by the costs.

MR. LUBICK: Your Honor, we don't object that these things cost money, and Mr. Li --

THE COURT: Do you have an objection?

MR. LUBICK: I would object --

THE COURT: If you don't have an objection, then the question is sufficient and appropriate. The Court finds that Mr. Shank continues to be evasive with respect to basic English language that is common to a graduate engineer.

The Court is satisfied that Mr. Shank understands the question. The Court is inclined to believe that Mr. Shank is intentionally being evasive. Now, Mr. Shank, I don't know whether Mr. Averbach counseled you at lunchtime,

but you ought to take that seriously. Now, answer the question.

THE WITNESS: To the best of my knowledge, I think I have. Maybe I am confused by the word costs. It is --

THE COURT: You understand what costs mean, sir.

THE WITNESS: Well, yeah.

THE COURT: And the generic sense of the word, costs, and the generic definition in Webster's Dictionary. No graduate engineer can sit there under oath and say that you don't understand what the ordinary meaning of costs is. I will not accept that, Mr. Shank.

THE WITNESS: Correct. I agree.

THE COURT: All right. Proceed. Answer the question.

THE WITNESS: I believe I have answered everything that is included under the bid item.

THE COURT: All right. Propound your question, Mr. Lin.

BY MR. LIN:

Q Mr. Shank, what kind of people would be hired to mount equipment to the floor, to anchor equipment to the floor?

A Electricians probably.

Q What is the cost to hire an electrician to perform this task is called?

Exhibit 129 in front of you; is that correct?

THE WITNESS: Yes. It was never sent to me.

THE COURT: Listen to my question, Mr. Shank. You have Plaintiff's Exhibit 129 in front of you; is that correct?

THE WITNESS: Yes.

THE COURT: Consisting of two pages; is that correct?

THE WITNESS: That's correct.

THE COURT: Prior to today had you ever seen this document before?

THE WITNESS: Yes, I had.

THE COURT: Approximately when was the first time that you saw Plaintiff's Exhibit 129?

THE WITNESS: It was during the first week of April.

THE COURT: Of what year?

THE WITNESS: 2000.

THE COURT: 2000; is that correct?

THE WITNESS: Yes.

THE COURT: That was the first time?

THE WITNESS: Yes.

THE COURT: And how did it come to your attention?

THE WITNESS: I found it in the files when I got to the Soo Area Office.

THE COURT: Sir?

THE WITNESS: I found it in the files when I got to the Soo Area Office.

THE COURT: You did a search and ran across it in the files; is 'that your testimony?

THE WITNESS: Well, I was looking at all the QC reports while I was there.

THE COURT: All right. And did you read that document, this document at that time?

THE WITNESS: Yes.

THE COURT: And did you read it in its entirety?

THE WITNESS: I am not sure.

THE COURT: What is your best recollection?

THE WITNESS: I am not sure I read every word, but I looked at every point I guess, yes.

THE COURT: And so you read it to have an in-depth understanding of the contents of the document; isn't that correct?

THE WITNESS: That would be correct.

THE COURT: You are a professional engineer aren't you?

THE WITNESS: Yes.

THE COURT: Where did you go to school, sir?

THE WITNESS: Portland State University.

THE COURT: Engineering is an exact science isn't

it?

THE WITNESS: Yes, it is.

THE COURT: Because if you don't schedule and draw the bridge correctly, it is going to fall isn't it?

THE WITNESS: Yes.

THE COURT: All right. Your engineers tend to be ultra-precise; isn't that correct?

THE WITNESS: Yes.

THE COURT: And thorough to a fault; isn't that true, sir?

THE WITNESS: Yes.

THE COURT: Now, when something is of interest to you, you make absolutely certain that you do not miss anything; isn't that correct?

THE WITNESS: Yes.

THE COURT: That's reasonable isn't it for a learned man with an engineering background. So that when you saw Plaintiff's Exhibit 129, you read it didn't you?

THE WITNESS: Yes.

THE COURT: And you read it from cover to cover didn't you?

THE WITNESS: Yes. Well, I read it there and I guess I was confused. That's all.

THE COURT: Mr. Shank, you are being difficult.

THE WITNESS: Yes, I'm sorry.

THE COURT: And you have a proclivity for being difficult, and you can't seem to get away from that. A professional man of your character should be above that, sir, and you are under oath here, too.

THE WITNESS: Yes.

THE COURT: Mind you, you should be aware of that continuously. Ask your next question, Mr. Li.

BY MR. LIN:

Q Mr. Shank, is it your testimony that nobody furnished a document as Exhibit 129 to your Hydroelectric Design Center office?

A That is not my testimony.

Q Is it true that you are the technical advisor to this installation contract at bar; am I correct?

A Yes.

Q Are you saying that nobody reported to you from the Soo Power Plant that something described in this document, and you never received it at the Hydroelectric Design Center?

A I did not. The mechanic that was working on the drawing, or working on the governor may have received it. I don't remember.

Q Who received it? You say who may have received it?

A It may have been Mark Lindstrom.

question is clear, Mr. Shank.

THE WITNESS: They may not send me everything.

THE COURT: That is not the issue, sir. You are being evasive. Do you recognize how evasive you have been?

THE WITNESS: I guess I sort of am, yes.

THE COURT: Let's take a recess.

(Whereupon, at 2:27 p.m., the trial recessed and resumed at 2:45 p.m.)

THE CLERK: All rise.

THE COURT: You may be seated. You may be seated, Mr. Li.

MR. LIN: Thank you. Your Honor.

THE COURT: All right.

BY MR. LIN:

Q May I present to you Plaintiff's Exhibit 135, corresponding to Pretrial 318.

THE COURT: Consisting of?

MR. LIN: Consisting of 10 pages.

THE COURT: Dated?

MR. LIN: Dated March 7th, 200.

THE COURT: Do you see how you can make your questions, sir, very succinctly and pointedly?

MR. LIN: Thank you, Your Honor.

THE COURT: A very simple thing.

(Pause.)

You may proceed, Mr. Li. I want you to know that, Mr. Shank.

BY MR. LIN:

Q Mr. Shank, may I also your attention to the last bullet under paragraph 2, "The Conclusions of this report are." May I read it to you that bullet, quote, the Soo Area Office is not staffed to perform inspection work to ensure that the contractor has complied with the contract requirements. The office is only staffed to perform its quality assurance duties."

Mr. Shank, had you ever performed --strike. Mr. Shank, had you ever worked with your own hands in a construction site?

A No.

MR. LUBRICK: Objection, irrelevant.

THE COURT: Overruled. The witness may answer.

THE WITNESS: No.

BY MR. LIN:

Q Is the purpose of your trip --

THE COURT: Wait a minute. How many questions are you asking, sir?

MR. LIN: He has answered.

THE COURT: The Court did not hear him. What was your answer?

THE WITNESS: I said no.

MR. LIN: I'm sorry. "Threads shall be clean cut."

BY MR. LIN:

Q Mr. Shank, how could someone tighten the rigid steel conduit watertight without using a wrench?

A Part of the watertightness is the joint compound. There's nothing wrong with using a wrench, but it doesn't need to be wrenched tight.

Q But it says watertight. Am I correct?

A The system is.

Q Mr. Shank, what does the contract in the paragraph here on page 244 of Plaintiff's Exhibit 212 in Binder 1 say about joint compound?

A It says the threads shall be coated with an approved joint compound.

Q What was that approved joint compound? What kind of joint compound? Does the contract here specify what kind of joint compound a contractor should use in order to make it watertight, you just said?

MR. AVERBACH: Your Honor, I would remind the Court that yesterday I told Mr. Lin and the Court that the termination for default was not on the basis of items such as the wrong joint compound.

We seem to be at this issue once again, and I really am not sure where it's going. It seems at this point

rather irrelevant, particularly in light of my own representation.

THE COURT: The Court can hardly hear you, sir.

MR. AVERBACH: It seems irrelevant, particularly in light of my representation now on three occasions that Mr. Lints contract was not termination for default because of use or non-use of a joint compound.

MR. LIN: Your Honor?

THE COURT: Mr. Lin, you must keep your eye on what the issues are in this case and meet the factual contentions of the Defendant.

If you go far afield, you're spinning your wheels. It's up to you to make that determination. The Court is not going to make that determination for you. If you wish to go far afield and inundate the record with minutia and irrelevances, you do it at your peril. You gain nothing.

You have to make the sharp decision whether the questions you propound to the witness on the witness stand will produce answers and evidence that will be helpful to your case. If the answers will not be helpful to your case and detrimental to the Defendant, you're wasting your time pure and simple.

MR. LIN: Your Honor, may I respond? May I respond?

THE COURT: Sure, you may respond.

Whereupon,

JAMES PEACH

having been previously duly sworn, was recalled as a witness herein and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. AVERBACH:

Q Good morning, Mr. Peach.

A Good morning.

Q Mr. Peach, are you familiar with the submittal requirements in the contract that's at issue in this case?

A Yes.

Q What is the purpose of the submittal requirements in the contract?

A The contract lists many submittals that are required of the contractor. Through them he tells us in detail about the products that he intends to provide, gives us an opportunity to confirm that they do comply with contract requirements.

He also provides a variety of plans and a schedule so that we understand in advance how the project will proceed.

Q Did Mr. Lin ever express to you his opinion concerning the importance of submittals?

A I think, yes, he did. He gave me to understand that the submittal requirements in our contract he believed were excessive. They were excessive to the point that they were a distraction from the actual physical work that he needed to do.

Q Mr. Peach, I'd like to refer you to Plaintiff's Exhibit 253, corresponding to Defendant's Pretrial Exhibit 46.

THE COURT: Is that a document dated February 23, 2000?

MR. AVERBACH: Yes, Your Honor.

THE COURT: All right.

THE CLERK: Mr. Averbach, you asked for 46?

MR. AVERBACH: Pretrial 46,yes.

THE CLERK: Pretrial 46 is in Binder 2.

MR. AVERBACH: It's my Binder 2. Okay. May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. AVERBACH:

Q Mr. Peach, do you have that exhibit in front of you?

A Yes, I do.

Q I'd like to refer you to the paragraph marked as No. 8 and in particular the first two sentences which states: "He rejects the idea that

scheduled milestones should be formalized in a modification and made a part of the contract. Formal milestones are not required by the original contract."

Can you explain the context of those two sentences?

A At this time in the project, the government was very concerned because the project wasn't progressing. We were not receiving submittals. It seemed that we weren't moving from the preparatory phase into the actual production phase.

There were quite a few transmittals or submittals that the contractor owed us, and although normally we have an environment that's structured by the contractor --I mean, itrs normally structured by the contractor's schedule and by the contractor's submittal register, his control document.

We could not see any control or any discipline within this project that gave us the feeling that the project would indeed advance and we would receive the submittals that we were owed in an organized way.

The government suggested that we could agree together, the government and the contractor, on a basic set of milestones so that we would have a mutual understanding about when certain documents and certain

products could be expected from Aptus.

Q What was Aptus' response to that proposal?

A Aptus rejected the proposal, and I believe that they felt that it was a constraint on their planning that offered nothing of value to them.

Q If you would turn, please, to Plaintiff's Exhibit 269, corresponding to Government Pretrial 68? That's Volume 3 of the government's exhibits.

THE COURT: What tab, sir?

MR. AVERBACH: Forgive me for one second, Your Honor. It's at page 62. I'll figure out the appropriate tab.

THE COURT: Page 62.

MR. AVERBACH: Page 62.

THE COURT: Yes.

MR. AVERBACH: It's going to be at Tab 36. However, as I'm looking at this, this does not appear to be the right document. My apologies.

I'm sorry. If you would turn, please, to Tab 48?

THE COURT: Is that at page 91?

MR. AVERBACH: Yes, Your Honor, beginning at page 91.

THE COURT: Imprinted on the front sheet, Appendix D?

MR. AVERBACH: Yes.

THE COURT: All right.

BY MR. AVERBACH:

Q Mr. Peach, following the page marked Appendix D, I'd like you to flip over to the next page marked as page 92.

A Yes.

Q Can you identify the document spanning pages 92 through 104 of Plaintiff's Exhibit 269?

A This is a handwritten submittal list prepared by our former Chief of our Electrical Branch, Don Erfourth. It lists submittals that should logically be provided under the Aptus contract.

The published submittal register that is bound into the original contract has many entries that are generic in nature. For example, there may be a single entry with a title like Shop Drawings.

Now, in reality as the contractor plans his work he sees that shop drawings applies to many different subassemblies and products, and in order to fulfill that requirement he actually has to provide a variety of shop drawings so it is necessary normally for a contractor to prepare a document like the one that you see before you that lists in much, much greater detail than the submittal register in the

contract exactly how he plans to comply with all the submittal requirements that are in the contract.

Q Did the Corps of Engineers provide a copy of pages 92 through 104 to Aptus?

A Yes.

Q Do you recall what Aptus' reaction was upon receipt of this document?

A I guess I don't specifically recall. It was accepted. I mean, it was received by Aptus, but I don't recall any statement that clearly was a commitment to proceed with this or with something similar.

Q If you would turn back --well, strike that. If I can ask the witness, please, to look at Plaintiff's Exhibit 249, corresponding to Plaintiff's Pretrial No. 41?

THE CLERK: Defendant's Pretrial 41?

MR. AVERBACH: Did I say Plaintiff's? I meant Defendant's.

THE COURT: Are you looking at a document that's captioned Transmittal 7?

MR. AVERBACH: No, Your Honor.

THE COURT: Are you still in Volume 3?

MR. AVERBACH: No. We're back to Binder 2 now.

THE COURT: All right. .Corresponding to 41, you say?

MR. AVERBACH: Correct, Your Honor. Progress and Quality Control Concerns dated February 2, 2000.

THE COURT: Yes.

BY MR. AVERBACH:

Q Mr. Peach, can you identify this document?

A Yes. This is a statement of our concerns as of that date, February 2. It's kind of a laundry list of the things that we felt Aptus was not giving us compliance.

Q Did you author this document?

A Yes.

Q Can I turn your attention, please, to page 3 of the document --

A Yes.

Q --under paragraph No. 3 marked Outstanding Submittals?

A Yes.

Q Can you describe what's set forth under subparagraph A?

A Well, as I said, there were many submittal requirements in this contract. At this point, as we were approaching physical installation, as we were

getting further into the contract, there was sort of a subset, a subgroup that were becoming extremely urgent.

I mean, we had I think a right to expect all of the submittals, but some of them --all of them were important, but some of them were actually urgent. This short list is a list of the urgent ones.

Q When you say urgent, do you mean that those submittals had not yet been provided?

A Yes. These had not yet been provided.

Q And what is set forth in subparagraph B of paragraph 3?

THE COURT: Before you go there, Mr. Averbach, what's a design submittal? What's in a design submittal in contradistinction to an installation submittal? I think I know, but I want the record to show.

THE WITNESS: A design submittal would actually be a technical design of a product or an assembly. It would be the product --

THE COURT: By the Plaintiff?

THE WITNESS: Yes.

THE COURT: To show how he proposes to structure a particular item?

THE WITNESS: He's physically showing us the

product he intends to provide.

THE COURT: The end product?

THE WITNESS: The end product, yes.

THE COURT: And the installation submittal would be a representation in writing of how he proposes to install?

THE WITNESS: Yes. It might be a procedure. It might be a layout for the floor of the --

THE COURT: All right. In other words, to keep you abreast of his progress in complying with the contract step by step, whatever that might be?

THE WITNESS: Yes. Kind of a plan. That's right.

THE COURT: All right. That's clear.

BY MR. AVERBACH:

Q Mr. Peach, can you describe what's set forth in subparagraph B of paragraph 3 on page 4 of Plaintiff's Exhibit 249?

A Yes. Part B here lists additional submittals that were owing that were not as urgent, submittals that we might actually normally expect to have to wait for, but just a reminder.

Q Does the handwritten list that you looked at earlier reflected beginning on page 92 of Plaintiff's Exhibit 269 contain the entire list of submittals

required under the contract?

A Well, the basic contract requirement for submittals is actually contained in the text of the contract itself. The handwritten list that Mr. Erfourth provided is his best interpretation of what a contractor would provide, a typical contractor would provide in order to comply with this. It's possible that different contractors might have different versions of the handwritten list, but something substantially like this would have been required.

Q I would ask the witness to turn to Plaintiff's Exhibit 256, corresponding to Defendant's Pretrial 51.

THE COURT: What are we supposed to be looking at, the document dated March lo?

MR. AVERBACH: Yes, Your Honor.

THE COURT: All right. When you reference the exhibit, if there's a date reference the key fact items that will help to make sure it identifies that we have the right document.

MR. AVERBACH: May I approach the witness? Your Honor, may I approach?

THE COURT: You may.

BY MR. AVERBACH:

Q Mr. Peach, do you recognize this document?

A Yes.

Q Can you identify it, please?

A It is another reminder addressed to Aptus informing them that they are late; that we have not received certain critically needed submittals that are connected with the installation.

Q Turning to the second page, whose signature appears at the bottom of the page?

A That is Stan, Stanley R. Jacek, the administrative contracting officer.

Q Did you draft this letter?

A Yes.

Q But Mr. Jacek signed it?

A Yes, that is correct.

Q Can you explain your relationship or the relationship between you and Mr. Jacek?

A Mr. Jacek has a higher level of contract authority than I have. He's an administrative contracting officer. He has overall responsibility for the contracts at our station.

The daily conduct of contract administration is my responsibility. I would be the individual that puts a great deal of time into it. Mr. Jacek has

certain authorities that I do not have. For example, he has the authority to sign a change order. I cannot change the contract.

In terms of sheer time or in sheer labor, I would be the one that puts in the majority of the hours. Mr. Jacek has much broader responsibilities that go in many different directions.

Q Did Mr. Jacek review this particular letter prior to signing it?

A Yes.

Q Was that typical?

A Very typical, yes.

Q It was typical for you to draft a document and for Mr. Jacek to sign it?

A That's standard operating procedure. When it comes to the contract --

THE COURT: Mr. Jacek is your superior?

THE WITNESS: Yes.

THE COURT: It's clear.

BY MR. AVERBACH:

Q Mr. Peach, turning to paragraph 1 of page 51 –

A Yes.

Q -- can you explain what is set forth in paragraph 1?

A The contract describes a required submittal, an environmental protection plan, and states that it is required prior to physical installation on site. We had not received it at this time.

Q What is set forth with respect to paragraph 2 or in paragraph 2?

A The same sort of statement only pertaining to a different submittal, the quality control plan.

Q As of March 10, 2000, had a quality control plan been approved?

A They had received an interim approval. The contract permits us to accept a QC plan on an interim basis for a period of 30 days if it is not fully adequate, but at this point we were looking for the final QC plan.

Q Can you describe what's set forth in paragraph 3?

A Very much the same thing except it pertains to a wire and cable submittal that we were owed.

Q And paragraph 4?

A Paragraph 4 says essentially the same thing. It points out that we need to have a plan for core drilling before Aptus attempts to drill any holes.

Q And how about paragraph 5?

A Very much the same thing. This refers to a

water control plan for core drilling. It would tell us how Aptus intends to control the water that's used in the core drilling process.

Q Had Aptus engaged in core drilling prior to March 10, 2000?

A Yes.

Q But at that time there was no core drilling plan in place?

A That is correct. The water control plan was the thing that was most critical at that point. The core drilling plan --locations of the holes probably could be determined by Voith drawings. That was probably less important, but the water control plan was really critical.

Q Why is that?

A There's operating high voltage electrical equipment on the floors in the powerhouses, and failure to control the water that is used essentially as a cooling agent or as a lubricant in the core drilling process could cause high voltage electrical equipment to get wet, which is very dangerous.

Q Was the submission of a water control plan a prerequisite? I'm sorry. Strike that.

Was approval of a water control plan a prerequisite for the commencement of any core drilling

under the contract?

A Yes.

Q With respect to the last sentence in paragraph 5, can you explain what is set forth in that sentence?

A It directs the contractor to refrain from drilling until we get this plan.

Q The second to the last paragraph states: "This is not a comprehensive list of submittals of immediate concern. For that you must refer to the contract itself and to the approved construction schedule and the list provided to you on February 23, 2000."

That February 23, 2000, list, is that the exhibit we were previously discussing?

A That is the handwritten list.

Q And what exhibit is that?

A Exhibit 68, I believe. Yes.

THE CLERK: 269.

MR. AVERBACH: Is it 269?

THE CLERK: Mr. Peach, on the front cover. There's a label on the front cover.

THE WITNESS: I'm sorry. Yes, 269.

MR. AVERBACH: If Your Honor could just bear with me for one second, please?

THE COURT: Yes.

(Pause.)

MR. AVERBACH: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. AVERBACH:

Q Mr. Peach, I will direct your attention, please, to a document dated April 11, 2000, which is Plaintiff's Exhibit 264, corresponding to Defendant's Pretrial 63.

A Yes.

THE COURT: This is a letter dated what?

MR. AVERBACH: April 11, 2000.

THE COURT: All right.

BY MR. AVERBACH:

Q Can you identify this document?

A Yes. This is a letter to Aptus written on April 11. I drafted it for Mr. Jacek's signature. It is a reminder.

It refers to the letter that we discussed just a few minutes ago which gave a short list of urgently needed submittals, and it reminds Aptus that we still have not received a response and that these things are critically needed.

Q The short list of urgent submittals is which

exhibit?

A It appears in 249.

Q Mr. Peach, I'd turn your attention to Plaintiff's 256. Do you not have that in front of you?

A I'm not sure.

THE COURT: It's in Tab 51?

MR. AVERBACH: Yes, Your Honor.

THE WITNESS: Tab 51? Thank you. Yes, I have Tab 51 open.

BY MR. AVERBACH:

Q Is that the short list you were referring to?

A I don't believe so. I may be confused about which letter the second letter refers to. Maybe I should take a closer look at it.

THE CLERK: Mr. Peach, Plaintiff's 256 is a letter dated March 10, 2000.

THE WITNESS: That would be the letter because that's what this second letter refers to specifically.

BY MR. AVERBACH:

Q Let me try to make things easier for you and for the Court. Turning to Plaintiff's 264, which is an April 11 letter, do you have that in front of you?

A Yes.

Q And turning to page 2 of that --

A Yes.

Q -- it states: "Please refer to my letter of March 10, 2000.11Do you see that?

A Yes.

Q "Five critical submittals are described." Do you see that?

A Oh, yes. Yes.

Q Which exhibit, if any, is referred to on page 2 of Plaintiff's 264?

A That's 256.

Q The letter states: "This letter is almost one month old," pertaining to 256. "Aptus has not complied with the letter or ever responded to it."

As you sit here today, do you recall that that statement is accurate?

A Yes.

Q Mr. Peach, I would ask you to turn to Plaintiff's Exhibit 95, corresponding to Plaintiff's Pretrial 258.

In fact, the easiest way to do this exercise may be to look at this document in conjunction --

THE COURT: This document? What are you referencing? You see, the transcript will not be able

to identify a document that's identified as this document.

MR. AVERBACH: Thank you, Your Honor.

BY MR. AVERBACH:

Q I'd ask that you look at Plaintiff's 95 in conjunction with Plaintiff's 120.

THE COURT: Corresponding?

MR. AVERBACH: 120 corresponds to Plaintiff's 299.

THE COURT: 299? You said 299?

MR. AVERBACH: Yes, Your Honor.

THE COURT: Thank you.

BY MR. AVERBACH:

Q As an initial matter, can you identify Plaintiff's 95?

A Yes. This is a design submittal offered by Aptus that describes the neutral grounding systems that Aptus proposes to install.

Q Keeping your finger on that page, can you also identify Plaintiff's 120?

A Yes. This is the second effort to meet that submittal requirement. You can see that 95 bears the number in the upper right-hand corner Transmittal 10, and 120 bears the number 10.1. That means that 10.1 is the successor to 10.

Q Turning first to No. 95, can you explain to the Court what is reflected on the pages that are numbered 1 through 5 in the written handwriting?

A In handwriting? Do you mean typed 1 through 5?

Q I'm just struggling a little because the first page of Plaintiff's 95 says X-258 at the bottom right corner. Do you see that?

A Yes.

Q Then if you turn over that page it's blank. Am I correct?

A Yes.

Q Then the next page has the handwritten notation 1.

A Yes.

Q Beginning with handwritten notation page 1 and going on through page 5, can you identify what is set forth on handwritten pages 1 through 5 of Plaintiff's 95?

A Yes. This document as a whole is actually a government response to the design submittal offered by Aptus. Pages 1 through 5 are comments that originated with our technical reviewers at Hydroelectric Design Center and in our own Electrical Section at Soo Area Office.

have one second?

(Pause.)

MR. AVERBACH: Nothing further for this witness.

THE COURT: Very well. Your witness, Mr. Lin.

MR. LIN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. LIN:

Q Mr. Peach, can we turn to Plaintiff's Exhibit 95, corresponding to Plaintiff's Pretrial Exhibit 258?

A Yes.

Q Can you turn to page 6?

A Yes.

Q Is this the disconnect switch the government requested, a written document from ABB, concerning the application of this disconnect switch in an enclosure of the resistor design that Aptus proposed?

A Yes.

Q Can I draw your attention to Plaintiff's Exhibit 120, corresponding to Pretrial Exhibit 299?

A Yes.

Q Under Remarks on the submittal cover sheet that is page 1 with the yellow --

3.14 CONCRETE REMOVAL

3.14.1 General

Concrete shall be removed by core drilling and, where needed, by chipping in a manner that will not fracture the surrounding concrete. Adequate equipment shall be provided to perform the work and remove the cores and other pieces of concrete safely and without damage to equipment and property of the Government. Slurry or tailings generated from drilling, chipping, or other concrete removal methods shall be confined to the immediate area, and disposed of by vacuuming or washing. Additional dust

control measures shall be implemented as per SECTION 01100 of these specifications for work inside the powerhouse. A written plan for core drilling and any other proposed methods of concrete removal and disposal shall be submitted for approval showing equipment to be used, expected noise levels and duration, and measures to avoid cutting existing embedded equipment. The written plan shall include the exact location of the core drill such that Contractor and the Contracting Officer can jointly check the asbuilt drawings to ensure embedded conduit piping and ground cables are not damaged. If embedded items are hit the operator shall immediately stop the core drilling and notify the Contracting Officer. All concrete removed shall be disposed of at a location directed by the Contracting Officer.

3.14.2 Circular Holes:

Circular holes for conduit penetrations shall be drilled by diamond-core drill equipment of the rotary, non-percussion type. Reinforcing and miscellaneous tramp metal may be encountered during the drilling operation.

Many of the specific items listed in the offered submittal were rejected, and they were rejected for specific reasons. These comments explained to Aptus exactly why the proposed design was rejected. and that gives him an opportunity to review them and to perhaps correct the design and make another submittal for approval.

Q If you would turn, please, to Plaintiff's 120 now?

A Yes.

Q Does Plaintiff's 120 constitute a response to the comments of the government set forth in Plaintiff's 95?

A 120 should be a response. I guess I would call this a partial response or a non-responsive response I guess.

Q Turning to handwritten page 10 of Plaintiff's 120 --

A Yes.

Q -- do you see Item No. 2 is circled?

A Yes.

Q Why is it circled?

A This sequence of pages beginning with page 10 is a reproduction of the original comments that were provided in response to Transmittal 10, the ones

that we just looked at a moment ag.0 in connection with Exhibit No. 95.

The circled ones with the arrows pointing to them are comments from the original submittal that were not addressed in the Aptus resubmittal. In other words, Aptus did not respond to these comments.

THE COURT: Were they required to respond?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. AVERBACH:

Q If you would turn to pages 12 and 13?

A Yes.

Q Do you see several entries on those pages circled?

A Yes, quite a few.

Q Are those circled for the same reason?

A They are circled for the same reason.

Q How about page 14?

A Yes. There's another there.

THE COURT: Did Aptus thereafter at any time give the Corps reasons why it failed to respond to those comments?

THE WITNESS: Not to my knowledge.

THE COURT: All right.

MR. AVERBACH: Your Honor, if I may just

Q Mr. Peach, do you have Plaintiff Exhibit 92, corresponding to pretrial 254, in front of you?

A Yes.

Q Thank you. Ninety-two, pretrial 254.

THE COURT: You may proceed, sir.

BY MR. LIN:

Q Can I direct your attention to page two of Plaintiff Exhibit 92?

A Yes.

Q Can you find, on the upper-left part, '120VAC station service circuit?'

A Well, yes, less the word 'circuit,' but 125VDC station service.'

Q Where are you reading it?

A We're on sheet two, right, upper --

Q Okay. Let me identify the drawing. On page two, with the drawing number 2642-0756, page two of 13 --

A Yes.

Q -- under coordinate 2a and 3a.

A Oh, yes. I'm sorry.

Q Do you see a print, '120VAC station service circuit?'

A Yes; yes, I do.

Q Do you see it?

A Uh-huh.

THE COURT: The Court doesn't see it. Hold it up and let me see where you're --

MR. LIN: May I approach?

THE COURT: You may approach. On the left-hand side? All right, all right.

BY MR. LIN:

Q Mr. Peach, what is Plaintiff Exhibit 92, in front of you?

A I don't know. I mean, it's a Voith Hydro shop drawing, but I don't know the particular significance of it.

Q Thank you. Now, let me return to page two of Plaintiff Exhibit 92, in the upper-left part, which I read, '120VAC station service circuit.'

A Yes.

Q Do you know what a station service circuit?

A It's an internal circuit that serves all the various purposes on the station, as it does with station services.

Q What is that circuit? Is that a hydraulic circuit or --

A I don't --

Q -- or numeric circuit?

A I don't know what this circuit referred to

on the drawing means.

Q Did you know it was an electrical circuit?

A Did I know?

Q Uh-huh.

THE COURT: Did he know when?

BY MR. LIN:

Q Did you know --

THE COURT: Or does he know.

MR. LIN: Okay.

THE COURT: You've asked him, didn't he know. You're implying a time frame.

BY MR. LIN:

Q Yes, Your Honor. Do you know today that station --what does station service circuit is in hydropower plant facility in Sault Ste. Marie, Michigan?

A No.

Q Do you know what is 120VAC stand for?

A One-hundred-twenty volt amperes, I believe current. That's --

Q What kind of current is this, 120VAC?

A Well, alternating current.

Q Under it, does this show the interconnection of station service circuit to Governor' s equipment?

A Mr. Lin, I don't know. I don't know how to

read these drawings.

THE COURT: That's all. You just answered the question, sir.

MR. LIN: Thank you.

BY MR. LIN:

Q May I draw your attention to page three of Plaintiff Exhibit 92?

A Yes.

Q Can I draw your attention to coordinate 2D?

A Yes.

Q Can you find, 'customer remote emergency lockout,' on the circuit?

A Yes, I see those words.

Q When you wrote your letter in Plaintiff Exhibit 249, dated February 2, 2000, did you know that the specific portion of Voith's drawing, as I just mentioned, provide interconnect drawing for Aptus to connect?

MR. AVERBACH: Objection, vague.

THE COURT: Do you understand the question, sir?

THE WITNESS: Yes. No, I did not know the specifics of these drawings or that this connection was provided here.

BY MR. LIN: